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1 **Preston**
 2 with Mr. Hanauer, when you're talking about
 3 someone who is such a significant shareholder,
 4 I think that -- comparability in size? No.
 5 Comparability in business? No. Importance of
 6 the directors? Every bit if not more so in
 7 terms of OHSL.

8 Q. Have you measured that in any way
 9 for purposes of your analysis, that the
 10 influence of the H-P directors would have been
 11 comparable to the influence of certain of the
 12 OHSL directors? Have you done any
 13 quantitative analysis?

14 **A. I have not quantified it.**

15 Q. Do you believe that you have tried
 16 to compare the influence on the closely knit
 17 OHSL community of the Herron Hanauer position
 18 as you described it compared to the position
 19 of the other directors who are in favor of it,
 20 that one would have been more influential than
 21 the other?

22 MR. BRAUTIGAM: Objection.

23 **A. Well, I think that Mr. Hanauer**
 24 **talked about it in his deposition. I think he**
 25 **said clearly he was told very definitively**

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1 **Preston**
 2 that unanimity was important, that without
 3 unanimity they didn't know if the deal would
 4 get done.

5 Q. Who told him that, if you remember?

6 **A. I don't believe that he remembered**
 7 **who told him that. But I think that that --**
 8 **he certainly remembered that, and I think that**
 9 **was a very accurate statement on his part.**

10 Q. But you didn't attempt, getting back
 11 to my question, to quantify the influence of
 12 Herron and Hanauer on the OHSL shareholder
 13 population as opposed to the influence of the
 14 other OHSL directors; is that correct?

15 MR. BRAUTIGAM: Objection.

16 **A. What I did do was, say, when people**
 17 **thought they acted with unanimity, the vote**
 18 **passed by 2 percent. Had people realized that**
 19 **there wasn't unanimity, it probably wouldn't**
 20 **have passed at all.**

21 Q. What's the basis for that? What's
 22 the quantitative basis for that?

23 MR. BRAUTIGAM: Objection.

24 **A. The kind of situation you saw in**
 25 **Hewlett-Packard.**

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1 **Preston**

2 Q. Paragraph 21 you have a definition
 3 of material.

4 **A. Um-hum.**

5 Q. What is the source of that?

6 **A. I think that that comes from**
 7 **probably the securities laws as well as**
 8 **finance literature.**

9 Q. The next section of your report
 10 talks about the McDonald fairness opinion, OK?

11 **A. Yes.**

12 Q. If you turn over to paragraph 23,
 13 page 10.

14 **A. OK.**

15 Q. You indicate that you have provided
 16 fairness opinions in the past.

17 **A. I have.**

18 Q. Have you reviewed in this case what
 19 McDonald & Company looked at?

20 **A. I have seen their fairness opinion.**
 21 **I have not seen, I don't believe, the**
 22 **underlying documents.**

23 Q. That's my question. Have you seen
 24 any projections, forecasts or anything like
 25 that that McDonald reviewed or relied upon?

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1 **Preston**

2 **A. No, I believe they said that they**
 3 **reviewed and relied upon information prepared**
 4 **by management and did not independently verify**
 5 **it.**

6 Q. My question is, do you have any idea
 7 what, if anything, they looked at along those
 8 lines of forecast or projections?

9 **A. Not specifically.**

10 Q. Paragraph 23 states, "In light of
 11 the fact that McDonald relied upon Provident's
 12 materially misstated historical financials."

13 First of all, what's the basis for
 14 your statement is that those financials were
 15 materially misstated?

16 **A. That they were restated. In fact,**
 17 **they were restated twice.**

18 Q. In your opinion that necessarily
 19 means that every year to which the restatement
 20 relates itself was materially misstated?

21 **A. I think that companies restate those**
 22 **things which they need to restate and in fact**
 23 **what we saw in the second restatement was that**
 24 **'94, '95, and '96 were lumped together pretty**
 25 **much.**

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 Preston</p> <p>2 So that taken as a whole they were</p> <p>3 at least materially misstated. I don't think</p> <p>4 companies restate what they don't have to.</p> <p>5 Q. My question is is that -- I</p> <p>6 understand that in the aggregate a restatement</p> <p>7 may be material.</p> <p>8 My question is are you opining, have</p> <p>9 you analyzed whether or not the fact of the</p> <p>10 restatement necessarily makes every single</p> <p>11 year to which it relates materially misstated?</p> <p>12 MR. BRAUTIGAM: Objection.</p> <p>13 A. When I looked at the restatement,</p> <p>14 and I think if you look at page 21 of my</p> <p>15 report, or you can look at page 20, but in</p> <p>16 either case what I'm looking at are numbers</p> <p>17 that are for the time period we're considering</p> <p>18 materially misstated.</p> <p>19 Q. 1999, the numbers for 1999 are</p> <p>20 four-year numbers, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And we previously talked about how</p> <p>23 you have not calculated how these numbers</p> <p>24 would flow into or impact the three-month or</p> <p>25 six-month numbers, correct?</p>	<p style="text-align: right;">Page 100</p> <p>1 Preston</p> <p>2 BY MR. BURKE:</p> <p>3 Q. I think when we went off the record</p> <p>4 we were talking about the first restatement</p> <p>5 and you wanted to review it to address a</p> <p>6 particular point.</p> <p>7 A. Correct.</p> <p>8 Q. OK.</p> <p>9 A. What I had said was the earnings</p> <p>10 restatement that was announced in March in</p> <p>11 fact was, um, had it been announced earlier in</p> <p>12 1999 at the time of the proxy or what could</p> <p>13 have been announced at that point would have</p> <p>14 had a negative impact. And it would have had</p> <p>15 a negative impact because this earnings</p> <p>16 announcement announces this change in</p> <p>17 accounting which has negative impact going</p> <p>18 forward. This was done in March 5th of 2003.</p> <p>19 "The Previous" -- and I'm quoting</p> <p>20 from now the announcement. "The previously</p> <p>21 announced earnings per share outlook for 2003</p> <p>22 was between \$2.50 and \$2.70. As a result of</p> <p>23 the evaluation of the estimated impact of the</p> <p>24 auto lease financing transactions, the revised</p> <p>25 earnings per share outlook is between \$2.30</p>
<p style="text-align: right;">Page 99</p> <p>1 Preston</p> <p>2 A. No. What I have said is that</p> <p>3 forecasts are predicated on this method of</p> <p>4 accounting, and in fact, the company</p> <p>5 acknowledged as much when it made its</p> <p>6 announcement regarding this restatement and</p> <p>7 said, As a result of this restatement, by the</p> <p>8 way, our earnings are going down in the</p> <p>9 future.</p> <p>10 So that whether these were</p> <p>11 recorded --</p> <p>12 Q. Which restatement are you talking</p> <p>13 about?</p> <p>14 A. The first restatement. This would</p> <p>15 affect our earnings in the future.</p> <p>16 Q. Your testimony is that the first</p> <p>17 restatement indicated that the earnings in the</p> <p>18 future would go down?</p> <p>19 A. Let's look at the first restatement.</p> <p>20 Q. OK.</p> <p>21 MR. BURKE: You can take a look at</p> <p>22 that. I am going to take a short break</p> <p>23 while you do that.</p> <p>24 THE WITNESS: OK.</p> <p>25 (A recess was taken.)</p>	<p style="text-align: right;">Page 101</p> <p>1 Preston</p> <p>2 and \$2.50."</p> <p>3 So a decline for 2003.</p> <p>4 "The company's expectation is that</p> <p>5 the impact of this matter will be</p> <p>6 significantly less in 2004 and in future</p> <p>7 years," but still negative. I added the "but</p> <p>8 still negative." It's not there.</p> <p>9 However, if one looks at the market</p> <p>10 reaction to it and commentary on it, some of</p> <p>11 which is also included in my paper, and I</p> <p>12 would refer you to page 26, Professor Min Wu</p> <p>13 says, "Earnings restatements rewrite a</p> <p>14 company's history, generally in an</p> <p>15 unflattering way. When companies restate</p> <p>16 earnings and particularly when that's</p> <p>17 accompanied by a warning about future earnings</p> <p>18 - as was the case with Provident - there are</p> <p>19 usually reverberations."</p> <p>20 This was not a benign, Oh, this</p> <p>21 isn't going to change anything. This changes</p> <p>22 the fundamental way they were doing business</p> <p>23 or the way the market perceived them doing</p> <p>24 business.</p> <p>25 Q. Are you familiar with any of these</p>

26 (Pages 98 to 101)

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1 Preston
 2 individuals who are quoted on page 26?
 3 A. Min Wu?
 4 Q. Yes.
 5 A. A very respected, highly regarded
 6 academic, yes.
 7 Q. Do you know whether or not any of
 8 these individuals followed or were
 9 knowledgeable about Provident or its business?
 10 A. Well, for example, let's look at Bob
 11 Nameri there. He manages \$62 billion, which
 12 included Provident shares.
 13 I would say that anybody who is
 14 managing that kind of money with their shares
 15 probably was quite familiar. I have not
 16 spoken with him directly obviously.
 17 Q. That's my question.
 18 Are any of these analysts'
 19 statements admissions or statements on behalf
 20 of the company?
 21 MR. BRAUTIGAM: Objection.
 22 Q. These are outside observers,
 23 correct?
 24 MR. BRAUTIGAM: Objection.
 25 A. These are people who read the

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1 Preston
 2 company's statement, which says, by the way,
 3 it's going to lower earnings this year and it
 4 will lower them in the future.
 5 Q. And do you know whether or not the
 6 lowering of earnings related to the accounting
 7 entries or the accounting theory --
 8 MR. BRAUTIGAM: Objection.
 9 Q. -- that was related in, that was
 10 involved in the first restatement?
 11 MR. BRAUTIGAM: Objection.
 12 A. I would say that if you're trying to
 13 contrast theory with entries, that the second
 14 restatement was more theory and the first was
 15 more entry.
 16 I would say it was also a little --
 17 one would think it was a systematic entry
 18 problem. It wasn't certainly a
 19 straightforward entry problem. It went, as
 20 one of these people says, something goes
 21 undetected for six years. That has to be
 22 reconciled with the cash flow statement is --
 23 certainly strains credibility.
 24 But if it was an entry problem the
 25 way I think of a data entry problem, data

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1 Preston
 2 entry problems don't cause continued problems.
 3 This is something the company says is going to
 4 cause continued problems.
 5 So they're going to correct it, but
 6 whatever exactly which I don't see revealed
 7 was exactly the cause of this overstatement of
 8 earnings is going to cause earnings now that
 9 we've got that correction made to be lower
 10 than you thought they were going to be in the
 11 future too.
 12 So this isn't, Oh, I put a wrong
 13 number in. This is this caused us to have to
 14 reevaluate what our earning stream is going to
 15 be.
 16 Q. And your testimony is you don't know
 17 the source of those incorrect entries; is that
 18 right? Or why it was recurring?
 19 MR. BRAUTIGAM: Objection.
 20 A. My testimony is that it was nine
 21 securitizations, and that what they said was
 22 that, and then here again, we can just look at
 23 the report and exactly what they said about
 24 it.
 25 The restatement of previously

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1 Preston
 2 reported operating results is attributable to
 3 errors in the accounting for nine auto lease
 4 financing transactions originated between 1997
 5 and 1999. But that is a systematic error.
 6 It's not a this occurred once. We have got to
 7 go back and relook at the whole stream of
 8 income and its effect.
 9 And you can see that those nine auto
 10 leases originated in 1999, up from 1997
 11 through '99, had much greater effects going on
 12 forward. So that this was not just like, Oh,
 13 this just happened once. This was not a
 14 one-time kind of we're going to correct this
 15 error if we had -- it had implications for
 16 years out.
 17 Q. Were you aware that it was a data
 18 entry error in a model that was used to
 19 estimate income and expense?
 20 MR. BRAUTIGAM: Objection.
 21 Q. Estimated over the life of the
 22 transactions?
 23 MR. BRAUTIGAM: Objection.
 24 A. I'm sure that's likely.
 25 Q. OK. Did you read in the course of

27 (Pages 102 to 105)

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1 Preston
 2 your work the PricewaterhouseCoopers report
 3 that talks about their investigation of what
 4 happened?
 5 **A. I don't believe I've seen it.**
 6 Q. Earlier you talked about the section
 7 in the press release that talked about a 20
 8 percent reduction in earnings estimates for
 9 2003.
 10 **A. 20 cents, I believed, not 20**
 11 **percent.**
 12 Q. Did I say 20 percent? I misspoke.
 13 I meant to say 20 cents.
 14 **A. Right.**
 15 Q. Do you know how much of that 20 cent
 16 reduction would have occurred had this been
 17 discovered in 1999 prior to the OHSL Provident
 18 merger?
 19 MR. BRAUTIGAM: Objection.
 20 Q. How would that number have compared?
 21 MR. BRAUTIGAM: Objection.
 22 **A. Well, if they discovered it they**
 23 **would have had different projections. So how**
 24 **would that number have compared in 2003?**
 25 Q. No, in 1999.

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1 Preston
 2 MR. BRAUTIGAM: Objection.
 3 **A. In 1999 the market is looking at**
 4 **what's the future for this company based on**
 5 **the business and the accounting methods that**
 6 **we know they have, and there are projections**
 7 **out there, and those are based on these same**
 8 **numbers. So that the projections would have**
 9 **changed in the same manner.**
 10 Q. How much?
 11 MR. BRAUTIGAM: Objection.
 12 **A. By what the company says, by 20**
 13 **cents in 2003.**
 14 Q. So it's your testimony that the
 15 projections in 1999 would have changed by 20
 16 cents?
 17 **A. It would have corrected it for that,**
 18 **yes. I mean, these are -- I'm just reading to**
 19 **you from their statement: The reported**
 20 **operating results is attributed to errors in**
 21 **the accounting for nine auto leases financing**
 22 **transactions originated between 1997 and 1999.**
 23 **So if they were originated then, we**
 24 **don't have cumulative effects of more being**
 25 **originated incorrectly later, that's the**

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1 Preston
 2 **effect in 2003 of loans that were originated**
 3 **in '97 through '99.**
 4 Q. But my point is this. You
 5 understand from your review of the press
 6 release that the adjustment reported in March
 7 of '03 was a cumulative adjustment that
 8 increased over time, do you not?
 9 **A. I think you can look at my report on**
 10 **page 20 or you can look at the company's**
 11 **numbers, but you can see that the earnings are**
 12 **restated every year. So that the restatement**
 13 **for 2003 or the change in 2003 is 20 cents.**
 14 **It's 20 cents if you -- the change -- the**
 15 **projection would be 20 cents different back in**
 16 **1999 for 2003.**
 17 Q. How did you calculate that or did
 18 you calculate that?
 19 MR. BRAUTIGAM: Objection.
 20 **A. That is straightforward logic.**
 21 Q. You didn't see any of the materials
 22 that McDonald relied upon including any
 23 projections or forecasts, correct?
 24 **A. Just that they said they had them,**
 25 **yes.**

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1 Preston
 2 Q. They said they had something.
 3 **A. Yes.**
 4 Q. What they had you don't know.
 5 **A. They said they had the company's**
 6 **projections and forecasts, yes.**
 7 Q. You had indicated that the
 8 McDonald's fairness opinion misled OHSL
 9 shareholders in the last line of paragraph 23.
 10 Paragraph 23, page 10.
 11 **A. Thank you.**
 12 Q. Do you see that?
 13 **A. I do.**
 14 Q. What's the basis for that?
 15 **A. Well, it was based on false**
 16 **financial information.**
 17 Q. My question is, how do you know that
 18 the McDonald opinion in particular misled OHSL
 19 shareholders?
 20 **A. I think I just answered that.**
 21 Q. I guess my question is, how do you
 22 know that any OHSL shareholders looked at,
 23 relied upon or even read the McDonald fairness
 24 opinion?
 25 MR. BRAUTIGAM: Objection.

28 (Pages 106 to 109)

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 2 **A. I don't know what an individual**
 3 **shareholder did. I think that's actually one**
 4 **of the purposes of the class action form of**
 5 **litigation, is that it assumes that there is**
 6 **in fact a body of shareholders and**
 7 **knowledgeable market participants who actually**
 8 **do do this and their actions are reflected in**
 9 **the purchase price of a particular security.**
 10 Q. And because you are familiar with
 11 class actions I will ask you one further
 12 question. If this is not something you can
 13 answer, let me know.
 14 The nature of class action
 15 litigation is that the class is bound by the
 16 evidence of the class representative, correct?
 17 MR. BRAUTIGAM: Objection.
 18 **A. Boy, that I am not familiar with.**
 19 Q. Fair enough.
 20 The next section talks about
 21 Mr. Hanauer. And we've talked about
 22 Mr. Hanauer a little bit.
 23 **A. Are we on page 11 now?**
 24 Q. Page 10 and 11, carrying over.
 25 **A. Right.**

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1 Preston
 2 Q. I am trying to short-cut this a
 3 little bit. We talked a little bit about
 4 Mr. Hanauer earlier in terms of dates for the
 5 feelings he expressed and other things of that
 6 sort and deposition testimony.
 7 **A. Right.**
 8 Q. In paragraph 25 you indicate that
 9 the information you cite about Mr. Hanauer may
 10 have caused the OHSL shareholders to form a
 11 different opinion about the transaction with
 12 Provident and in all likelihood would have
 13 altered the outcome of the vote.
 14 **A. Correct.**
 15 Q. What's the nature of the analysis
 16 that led you to that conclusion?
 17 **A. I think we have been over this**
 18 **already.**
 19 Q. OK. If it's what you testified to
 20 earlier, then that's fine.
 21 **A. Yeah, I think, you know, the fact of**
 22 **Mr. Hanauer -- well, I will just kind of**
 23 **summarize. It was the fact of Mr. Hanauer's**
 24 **position within the company, his position in**
 25 **Cincinnati in terms of it being a local**

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1 Preston
 2 business run by someone who had been there for
 3 a long time, the fact that we have -- that I
 4 did look at analogous situations, and I cited
 5 the Hewlett-Packard one in my report and we
 6 discussed that, would generally be the things
 7 that I would state.
 8 Q. Was Mr. Hanauer a homegrown OHSL
 9 employee?
 10 MR. BRAUTIGAM: Objection.
 11 Q. If you know.
 12 **A. I don't know.**
 13 Q. He was not one of the founders of
 14 OHSL, correct?
 15 MR. BRAUTIGAM: Objection.
 16 **A. I don't recall his testimony on**
 17 **that.**
 18 Q. Page 11, up at the top, you say "I
 19 base this opinion on the fact that investors
 20 are keenly interested in the opinions of
 21 senior management, especially the most senior
 22 member, the CEO."
 23 **A. Right.**
 24 Q. What's the foundation in literature,
 25 in publications, in studies or treaties for.

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1 Preston
 2 that?
 3 MR. BRAUTIGAM: Objection.
 4 **A. If you look at the next paragraph,**
 5 **and there's a footnote about the AIMR**
 6 **corporate disclosure survey, that's included**
 7 **in my production here.**
 8 Q. So that survey is part of the
 9 materials you produced.
 10 **A. It is.**
 11 Q. Thank you.
 12 **A. I mean, that survey is certainly,**
 13 **one of them I think it confirms what would be**
 14 **logical common sense. It's the reason why we**
 15 **have CEOs, CFOs. They are the people who are**
 16 **in charge. They are the people who speak in**
 17 **general to the investment community and to the**
 18 **public.**
 19 Q. And you believe that, I think you
 20 refer in paragraph 26 to the fact that
 21 investment professionals and financial
 22 analysts opine on what they consider the most
 23 important source of financial or corporate
 24 information.
 25 **A. Correct.**

29 (Pages 110 to 113)

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Preston

Q. And you believe that investment professionals' and financial analysts' reliance upon the CEO or CFO would be analogous to the position of the OHSL shareholders; is that correct?

MR. BRAUTIGAM: Objection.

Could you read that question back, please.

(A portion of the record was read.)

A. I think the investment professionals and financial analysts often are stockholders to begin with.

But more than that, I think that this is a representative study that shows that there are such people who -- it's a quantification of something that is frankly pretty obvious.

I mean, it is highly, would be highly unusual for a junior accountant to address the annual meeting on the financial state of the company. It would be highly unlikely for the secretary in the shipping department to address, um, to write a letter to the background in the proxy statement.

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Preston

Q. Down later on page 11, in the middle of that paragraph, paragraph 27, you state "My analysis of the historical trading data for OHSL common stock indicates that the shares did not turn over quickly relative to the total number of shares outstanding. This suggests that many of its investors were committed, long-term owners of the stock."

Is there any other possibility that would have explained the lack of trading?

A. Yes. Trading is subject to supply and demand. And therefore at the right price, you know, if somebody had offered them a hundred dollars a share, there might have been more trading. But given that there wasn't, they obviously held their shares longer than is customary.

Q. Are you aware that the evidence is that the market for OHSL stock was very illiquid?

MR. BRAUTIGAM: Objection.

A. Explain to me what evidence you're talking about.

Q. Are you familiar with Mr. Thiemann's

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These people are generally expected by the investment community, being investors, being the -- whether they're investment professionals or whether they're you and I or financial analysts, you expect the knowledgeable people to do the conveying of the information. And in fact, that's what's happened in this company.

Q. Were there any investment professionals or financial analysts that were tracking OHSL?

A. McDonald's was I believe.

Q. Anyone else that you can think of?

A. Not offhand. The analyst reports that I have are in this package.

Q. Did you obtain in the course of your work any understanding of the type of neighborhood or area Oak Hills is?

MR. BRAUTIGAM: Objection.

Q. Do you understand what I'm asking you? Is it Brooklyn or Westchester County? Any sense of that?

MR. BRAUTIGAM: Objection.

A. I don't.

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testimony about the liquidity of the stock or the analysis in the proxy statement of the liquidity of the OHSL stock?

A. Yeah, I've looked at the trading data and I've looked at the price movement in the stock relative to it, as I think it -- it was liquid enough to be efficient.

Q. And what's the basis for that?

A. Well, it reacts to information.

Q. The next sentence indicates "the stock was not actively followed by securities analysts." That's correct?

A. Yes.

Q. The next statement about "Mr. Hanauer was a visible member of the community," what's your basis for that?

A. I think it's testimony. I'm trying to remember whose. Certainly the fact that he had been affiliated with the bank for twenty years. I live in a small community. We have a small community bank. The people who are affiliated with it are known throughout the community.

Q. What bank is that?

30 (Pages 114 to 117)

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 2 **A. It is now PNC, but it began as**
 3 **Princeton Bank. So it went through eight**
 4 **probably mergers, acquisitions and changes,**
 5 **but the same people are there and everybody**
 6 **knows Chris Lockhammer and other folks who are**
 7 **affiliated with the bank and they're**
 8 **well-known members of the community.**
 9 Q. Paragraph 28, we have already talked
 10 about Mr. Herron and his testimony. You talk
 11 about Mr. Zoellner.
 12 **A. Uh-huh.**
 13 Q. Did you read all of Mr. Zoellner's
 14 testimony?
 15 **A. Yes.**
 16 Q. And did you read, just so I
 17 understand, did you read his testimony in the
 18 federal and the state court action, do you
 19 remember?
 20 MR. BRAUTIGAM: Objection. I don't
 21 believe Mr. Zoellner was deposed in the
 22 state court action.
 23 MR. BURKE: He might not have been.
 24 I stand corrected.
 25 **A. I have read so much testimony, I --**

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1 Preston
 2 Q. OK. You cite Mr. Cook.
 3 **A. Yes.**
 4 Q. Do you have any knowledge as to
 5 whether Mr. Cook had any knowledge whatsoever
 6 about Mr. Hanauer's position, firsthand
 7 knowledge?
 8 **A. I don't believe Mr. Cook was in the**
 9 **board meetings, or whatever. I believe**
 10 **however that he definitely testified that he**
 11 **believed opposition to the transaction was**
 12 **material. I think -- Mr. Podetta? I think**
 13 **that's his name.**
 14 Q. Pedoto.
 15 **A. Pedoto, also testified.**
 16 Q. Mr. Thiemann, you cite his
 17 testimony. Do you recall reading the portion
 18 of Mr. Thiemann's testimony where he talked
 19 about his financial plan??
 20 **A. No.**
 21 Q. Do you recall what Mr. Thiemann in
 22 fact did in terms of the sale of his OHSL
 23 shares --
 24 MR. BRAUTIGAM: Objection.
 25 Q. -- in connection with the merger?

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 2 **A. Well, I don't recall specifically**
 3 **from his testimony based on my language here.**
 4 **He obviously did not vote against it.**
 5 Q. Right. Do you recall whether or not
 6 Mr. Thiemann indicated that he in fact had
 7 read the proxy statement?
 8 **A. I don't.**
 9 Q. Paragraph 30, as we move through
 10 this, to the extent your answer is what you've
 11 testified to already, just let me know.
 12 The first sentence states, "It is my
 13 opinion that if shareholders had known that
 14 the person on the board of directors with the
 15 largest financial stake in the Company, and
 16 the greatest ability to impact the vote by
 17 virtue of share ownership, did not believe the
 18 Merger was in the best interest of
 19 shareholders, the outcome of the shareholder
 20 vote would...likely have been different."
 21 MR. BRAUTIGAM: "Most likely."
 22 Q. I'm sorry, most likely would have
 23 been different.
 24 My first question deals with this
 25 section that says that Mr. Hanauer, who I

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1 Preston
 2 believe is being referred to here, did not
 3 believe the merger was in the best interest of
 4 shareholders.
 5 Again, what is the time frame for
 6 that belief, if you understand it?
 7 **A. The time frame -- I don't know. I**
 8 **think you asked me when he came to that**
 9 **belief. I'm not sure of the time. But, you**
 10 **know, it's certainly the case that he came to**
 11 **that belief before the transaction closed.**
 12 Q. What's your basis for saying that?
 13 **A. He voted against the -- his own**
 14 **shares against it. He certainly at some point**
 15 **came to the belief that it was not the --**
 16 **clearly the Kincaid (phon) lawyers thought he**
 17 **should have advised them of it and that that**
 18 **was a material fact.**
 19 Q. Did you see the portion of
 20 Mr. Hanauer's testimony where he testified
 21 that the reason he voted against the
 22 transaction was because he was not ready to
 23 retire at age whatever he was at that time?
 24 MR. BRAUTIGAM: Objection.
 25 Mischaracterization.

31 (Pages 118 to 121)

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1 Preston
 2 **A. Yes. I think it was 50 or**
 3 **something.**
 4 **Q. 50. OK.**
 5 **A. He said he wasn't ready to retire.**
 6 **I don't know as he said the reason he voted**
 7 **against it was that, but he certainly said he**
 8 **wasn't ready to retire at age 50.**
 9 **Q. Is it your testimony that this**
 10 **belief that you referred to here, that**
 11 **Mr. Hanauer reached that belief prior to the**
 12 **preparation and transmittal of the proxy**
 13 **statement?**
 14 **A. You know, I don't know when he**
 15 **reached that belief. I do know that in fact**
 16 **if we look at the Hewlett-Packard situation,**
 17 **we have a situation where Mr. Hewlett voted**
 18 **for the -- as part of the board of directors,**
 19 **voted for the transaction and then made his**
 20 **personal views known. Afterward he changed**
 21 **his mind.**
 22 **I think that whether, um, his**
 23 **personal view was that it wasn't in the best**
 24 **interest of the shareholders when he voted for**
 25 **it, or that he was simply worn down, as he**

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1 Preston
 2 **said, and gave up, and that would lead me to**
 3 **believe that his personal belief by August 2nd**
 4 **was that it wasn't in the best interest, but**
 5 **he just gave up.**
 6 **But even if it wasn't, if before the**
 7 **vote is finalized, before his opinion has**
 8 **changed that dramatically, that's an important**
 9 **piece of information for shareholders.**
 10 **But the fact is that his testimony**
 11 **is that he simply gave up, I believe, are the**
 12 **words that he uses. That doesn't indicate to**
 13 **me that that happened after the proxy**
 14 **materials were published.**
 15 **Q. But you haven't seen anything**
 16 **definitively one way or the other on that.**
 17 **MR. BRAUTIGAM: Objection.**
 18 **Q. When he reached that belief; is that**
 19 **correct?**
 20 **A. I have not seen testimony from**
 21 **Mr. Hanauer that says I came to this opinion**
 22 **on July 21st. In fact, I have seen testimony**
 23 **and actions that indicate on July 22nd he was**
 24 **of that opinion. His actions say that.**
 25 **And then on -- and people, he was**

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1 Preston
 2 **known by board members to be against the**
 3 **transaction. And then I see that on**
 4 **August 2nd he says he just gave up. So it**
 5 **would appear to me that he was always of that**
 6 **opinion.**
 7 **Q. I think you answered this in the**
 8 **beginning, but my question is, do you see**
 9 **anything in Mr. Hanauer's testimony where he**
 10 **said I did not believe what is stated in your**
 11 **sentence as of a particular day or I came to**
 12 **that belief as of a particular day?**
 13 **MR. BRAUTIGAM: Objection.**
 14 **A. I didn't see anything as of a**
 15 **particular date. Only we know that as of**
 16 **August 2nd he just gave up.**
 17 **Q. And voted in favor of the**
 18 **transaction that day, correct?**
 19 **A. And voted in favor.**
 20 **Q. Did you see in Mr. Hanauer's**
 21 **testimony where he stated that he did not**
 22 **believe that this was significant information**
 23 **because it was his personal belief, not his**
 24 **belief as an officer or director of the**
 25 **corporation?**

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1 Preston
 2 **MR. BRAUTIGAM: Objection.**
 3 **A. I saw testimony -- or I've certainly**
 4 **discussed that. I don't recall.**
 5 **Q. Fair enough.**
 6 **A. The words in the testimony don't**
 7 **come to me at this point.**
 8 **Q. That's fine. Do you recall anything**
 9 **in the testimony of Mr. Hanauer where he**
 10 **indicated either to his counsel or to anyone**
 11 **else at OHSL this belief that you are**
 12 **referencing in this paragraph 30 of Preston**
 13 **Exhibit 3?**
 14 **A. No, I recall counsel testifying that**
 15 **if it was his belief, he should have made it**
 16 **known, and it was -- should have been public.**
 17 **But I don't recall him having made them aware.**
 18 **Q. This last sentence of that section,**
 19 **"In fact, Mr. Hanauer had already voted his**
 20 **shares against the transaction at the time of**
 21 **the special meeting of shareholders."**
 22 **What's the support for that if you**
 23 **remember?**
 24 **A. I have seen documents talking about**
 25 **when he voted. I don't recall.**

32 (Pages 122 to 125)

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1 **Preston**

2 Q. Fair enough. The next section talks
3 about your analysis of the vote and what votes
4 would have been cast in opposition, and I'm
5 going to ask you your basis for that. If
6 that's what you testified to already, that's
7 fine.

8 But your statement in particular
9 that I am referring to in the second sentence
10 on page 14, "The transaction was approved by a
11 slight majority of the shares, many of which I
12 believe would have been cast in opposition to
13 the transaction, had shareholders been
14 provided with accurate and non-misleading
15 information in the Proxy."

16 What's the basis for your belief?

17 **A. The change in the stock price of**
18 **Provident and the correct financial reporting,**
19 **the fact that Mr. Thiemann testified that he**
20 **would have voted his shares against the**
21 **transaction, and the fact that you would have**
22 **only needed 23,000 votes changing, and the**
23 **likelihood of that number of votes changing**
24 **based on other companies and what happens when**
25 **you have a director who is actively against a**

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1 **Preston**
2 **merger is my basis.**

3 Q. That's Hewlett-Packard?

4 **A. That's Hewlett-Packard.**

5 Q. And part of your belief is based
6 upon what you believe the financial impact on
7 Provident stock price would have been.

8 **A. That's true.**

9 Q. Is that right?

10 **A. Yes. The fact that Mr. Herron**
11 **resigned I think I just left out, but that's**
12 **certainly a very significant piece of**
13 **information as well.**

14 Q. The next statement states,
15 "Regardless of whether or not the outcome of
16 the vote would have been different, OHSL
17 shareholders were entitled to consider all
18 relevant information." It continues from
19 there.

20 Why do you add "regardless of
21 whether or not the outcome of the vote would
22 have been different"? Why is that thought in
23 there?

24 **A. Because it's true. I think it goes**
25 **back to the original statement I had, which is**

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1 **Preston**

2 **the purpose of the proxy statement itself, is**
3 **to provide accurate information so people can**
4 **make informed decisions.**

5 Q. There is at least the possibility or
6 in your mind though that the shareholder vote
7 may not have been affected by these matters.

8 **MR. BRAUTIGAM: Objection.**

9 Q. Is that correct?

10 **A. There is never certainty with**
11 **something that hasn't happened. So -**

12 Q. I'm going to remember that line.

13 **A. So that there's some small chance,**
14 **very small I think, given the numbers we're**
15 **talking about. Some small chance.**

16 Q. Page 15, carryover paragraph 32,
17 last sentence, "During the course of
18 negotiations in 1999 at least four of the
19 eight original Board members were not in favor
20 of continuing merger negotiations with
21 Provident and expressed their objections."

22 Can you describe for me what you're
23 referring to there?

24 **A. Well, you can look at the footnote.**
25 **And there we have Mr. Zoellner testifying that**

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1 **Preston**

2 **as of June he, Mr. Hanauer, Mr. Herron and**
3 **Mr. Hillenbrand were not in favor of the sale.**

4 Q. And that obviously changed, correct?

5 **MR. BRAUTIGAM: Objection.**

6 **A. For some of them.**

7 Q. I mean, if four of them, four of the
8 eight were opposed there would have been no
9 negotiations, correct?

10 **MR. BRAUTIGAM: Objection.**

11 **A. I guess it might depend on how they**
12 **counted them. They have a little different**
13 **counting than people usually do, so...**

14 Q. Did you read the background of the
15 transaction section of the proxy statement?

16 **A. I did.**

17 Q. You're aware it talked about how
18 possible sale of the company had been explored
19 prior to 1999 and the company decided not to
20 go that route; is that correct?

21 **A. Yes.**

22 Q. So it's a fact that the decision by
23 the OHSL board in prior years not to explore a
24 merger was disclosed.

25 **MR. BRAUTIGAM: Objection.**

33 (Pages 126 to 129)

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1 Preston

2 **A. You know, I have not memorized it.**
 3 **I would be glad to look at it again and make**
 4 **sure that we've got everything. Now, I know**
 5 **they have looked at things previously. They**
 6 **didn't go forward.**

7 **Q. In your experience with proxy**
 8 **statements when in the background of a**
 9 **transaction there is a description of what is**
 10 **going on, is it your experience that every**
 11 **vote of the board of directors is disclosed in**
 12 **terms of whether it's a five to one vote or a**
 13 **four to two vote as the discussion of a**
 14 **transaction moves forward?**

15 **A. Not necessarily.**

16 **Q. Have you seen this situation where**
 17 **when something is not unanimous the**
 18 **description in the proxy statement will be**
 19 **that the board of directors approved or the**
 20 **board of directors disapproved?**

21 **A. It in fact might be the case, yes.**

22 **Q. In your experience if a statement is**
 23 **that the board of directors approved or**
 24 **disapproved something and it doesn't state**
 25 **unanimously, that you would assume or that you**

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1 Preston

2 **officer of Collins & Company, which owns**
 3 **150,000 Hewlett-Packard shares. "It signals**
 4 **some doubt in Carly's management and judgment.**
 5 **This will change how the vote shakes out."**

6 **I think that's exactly what we've**
 7 **been talking about, that opposition can**
 8 **change, and usually does, how a vote would**
 9 **come out.**

10 **Q. We also talked about earlier how it**
 11 **did not change the outcome of this particular**
 12 **merger, correct?**

13 **MR. BRAUTIGAM: Objection.**

14 **A. No. You know, I'm not sure of that.**
 15 **Are you?**

16 **Q. The board of directors voted to**
 17 **approve the transaction, correct?**

18 **MR. BRAUTIGAM: Which transaction?**

19 **MR. BURKE: The original merger**
 20 **transaction.**

21 **MR. BRAUTIGAM: H-P?**

22 **MR. BURKE: Yes.**

23 **Q. Isn't that right?**

24 **A. That's true.**

25 **Q. Mr. Hewlett voted in favor of it.**

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1 Preston

2 **would understand that the vote was not**
 3 **unanimous.**

4 **MR. BRAUTIGAM: Objection.**

5 **A. I don't know as I would make an**
 6 **inference one way or another on that.**

7 **Q. Pages 16 through 19 deal with the**
 8 **Hewlett-Packard issue that you talked about**
 9 **previously.**

10 **A. Right.**

11 **Q. And obviously there is a fair amount**
 12 **more detail than here than we talked about,**
 13 **but my question is, have we covered in my**
 14 **questions here today the essence of your**
 15 **opinion why the Hewlett-Packard situation is**
 16 **analogous to the Provident/OHSL situation?**

17 **MR. BRAUTIGAM: Objection.**

18 **A. I guess I would point you to**
 19 **paragraph 37 there and the first quotation in**
 20 **that. This is where Mr. Hewlett has**
 21 **determined that he is going to vote his shares**
 22 **and those of his foundation against this deal.**

23 **And this quotation says: "This is**
 24 **quite a blow to the current management of**
 25 **H-P," said Bruce Raabe, chief investment**

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1 Preston

2 **A. Yes.**

3 **Q. And Mr. Hewlett came out in**
 4 **opposition to it as you described.**

5 **A. That's true.**

6 **Q. Then it was put to a vote of the**
 7 **shareholders.**

8 **A. Correct.**

9 **Q. And the shareholders approved the**
 10 **transaction.**

11 **A. Yes.**

12 **Q. Were the transaction terms**
 13 **renegotiated?**

14 **A. In the Hewlett-Packard deal?**

15 **Q. Yes.**

16 **A. I don't believe so. I don't recall.**

17 **Q. So at least as to the best of your**
 18 **recollection Mr. Hewlett's opposition did not**
 19 **change the financial terms of the deal.**

20 **A. I don't believe it did.**

21 **Q. Page 19, paragraph 40. Again, we're**
 22 **talking here generally about Provident's loan**
 23 **securitization activities.**

24 **And again, this deals with the**
 25 **disclosures exclusively in the proxy**

34 (Pages 130 to 133)

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1 Preston
 2 statement, correct?
 3 **A. Correct.**
 4 Q. Paragraph 41 talks about in the
 5 second sentence "Unless one assumes OHSL
 6 shareholders were previously familiar with the
 7 concept of loan securitization, and gain on
 8 sale accounting, the risk disclosure section
 9 did not adequately explain the very real
 10 possibility that Provident's earnings could be
 11 negatively impacted in the future."
 12 MR. BRAUTIGAM: Objection, it's not
 13 the second sentence.
 14 MR. BURKE: OK, it's the third
 15 sentence. Shoot me for one.
 16 Q. Do you see where I'm referring to?
 17 **A. Yes.**
 18 Q. Loan securitizations and gain on
 19 sale accounting are highly technical
 20 accounting concepts, are they not?
 21 **A. Yes, they're technical.**
 22 Q. How does one in your experience go
 23 about explaining such highly technical
 24 accounting concepts to a shareholder base that
 25 in this case consisted of former depositors in

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1 Preston
 2 an S&L without overwhelming them with
 3 information they are unable to understand?
 4 MR. BRAUTIGAM: Objection.
 5 Q. Do you understand what I'm asking?
 6 **A. How do you describe what loan**
 7 **securitization is and how dangerous it is? I**
 8 **don't think you have to have a geologist**
 9 **define a cliff to know that if you fall off a**
 10 **thousand foot cliff you can break your leg.**
 11 **So I think that that is not -- you don't have**
 12 **to describe the accounting entries that need**
 13 **to be made.**
 14 **What you do is you need to make sure**
 15 **that people understand what a huge percentage**
 16 **of your business it is, how your accounting**
 17 **treatment could radically change the way**
 18 **you're recognizing your revenue as a result of**
 19 **it. You could change your accounting**
 20 **treatment, and that would have an unfavorable**
 21 **impact on the way you're recognizing your**
 22 **income.**
 23 **I think that you could let people**
 24 **know that it's, you know, these are -- our**
 25 **accounting treatment is subject to change, and**

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1 Preston
 2 if we do change it, you know, our earnings are
 3 going to go down. And so that you don't need
 4 to explain all the nuances in order to let
 5 people know that this isn't an S & L and these
 6 are much much riskier things than you're used
 7 to.
 8 Q. You answered my question. If I
 9 understand you correctly, it's not the
 10 technical details of those concepts. It's the
 11 risks associated with them that need to be
 12 disclosed.
 13 **A. The risks associated with them and**
 14 **the impact that those, that these have. We're**
 15 **not talking about something that's 2 percent**
 16 **of our income here.**
 17 Q. Do you recall that in granting in
 18 part and denying in part defendant's original
 19 motion to dismiss that the court recognized
 20 that the proxy materials adequately disclosed
 21 the risks of securitizing loans?
 22 MR. BRAUTIGAM: Objection.
 23 Q. Do you remember that conclusion by
 24 the court?
 25 **A. I don't.**

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1 Preston
 2 Q. Do you have any opinion one way or
 3 the other on whether or not the percentage of
 4 income or the extent of the securitizations as
 5 it affected Provident's financial statements
 6 were disclosed in other periodic filings other
 7 than the proxy statement?
 8 **A. I believe they were.**
 9 Q. The next several pages from pages 20
 10 through twenty -- beginning at the top of page
 11 25 deal with the Provident earnings and the
 12 impact of the restatement.
 13 **A. Right.**
 14 Q. We talked a little bit about the
 15 chart at the bottom of page 20 already.
 16 **A. Yes.**
 17 Q. And I think we have already talked
 18 about what the impact for the interim
 19 financials in 1999 would or would not have
 20 been, correct?
 21 **A. We talked about what they would or**
 22 **would not have been and what the -- knowing**
 23 **that this kind of accounting was in use and**
 24 **its impact if it were changed, how that would**
 25 **have changed people's projections.**

35 (Pages 134 to 137)

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1 **Preston**

2 Q. OK. In paragraph 42, in the middle
3 of that paragraph, the sentence begins
4 "After"?

5 A. Yes.

6 Q. And you referred to in the next
7 line, "the fact that Provident's reported
8 earnings and projections were relied upon, at
9 the time, by McDonald, in arriving at its
10 fairness opinion," OK?

11 A. Yes.

12 Q. We talked about earnings. Do you
13 have any knowledge of what, if any,
14 projections were relied upon by McDonald or
15 what they showed? Projections of what?

16 MR. BRAUTIGAM: Objection.

17 A. I think if we look at I think it's
18 Annex C of the proxy we can read exactly what
19 McDonald said.

20 Q. This is a document previously
21 marked, we're not going to bother with this
22 for purposes of today, as Defendant's
23 Exhibit 1. And I will attempt to direct your
24 attention. Is that the document you referred
25 to?

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1 **Preston**

2 forecasts and prospects of the respective
3 companies as well as other matters we believed
4 relevant."

5 Then I think if you go to the
6 following page, in the paragraph under ix,
7 halfway through that paragraph, beginning at
8 the left-hand side of the page, "with respect
9 to financial forecasts used in our analysis we
10 have assumed that such forecasts have been
11 reasonably prepared by management of OHSL and
12 PFGI as the case may be on a basis reflecting
13 the best currently available estimates and
14 judgments of management of OHSL and PFGI as to
15 the future performance of OHSL, PFGI and OHSL
16 and PFGI combined as the case may be."

17 So based on this statement I would
18 say they had reviewed forecasts prepared by
19 management of Provident for their use.

20 Q. But you don't know what the
21 forecasts related to, correct?

22 MR. BRAUTIGAM: Objection.

23 A. I think they related to Provident.
24 At least Provident. And probably it was
25 Provident that prepared those that were for

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1 **Preston**

2 A. It is.

3 (Pause to correct technical
4 difficulty.)

5 A. (Continuing) In terms of what
6 McDonald's relied upon from Provident, --

7 Q. Right.

8 A. -- they reviewed the historic
9 information that was contained in their annual
10 reports and 10-Ks, Qs. They reviewed certain
11 other public and nonpublic information,
12 primarily financial in nature, relating to
13 their respective businesses, earnings, assets
14 and prospects of OHSL and PFGI provided to us
15 or publicly available.

16 That's little iii.

17 Q. And prospects is what you're
18 referring to?

19 A. Prospects there.

20 In iv, prepared in meetings and
21 telephone conferences with -- I'm sorry,
22 "participated in meetings and telephone
23 conferences with members of senior management
24 of OHSL and PFGI concerning the financial
25 condition, business, assets, financial

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1 **Preston**

2 the Provident/OHSL combination.

3 Q. Forecasts of what?

4 A. Relevant financial information.

5 Q. But you don't know what relevant
6 financial information was contained on the
7 forecast, right?

8 A. I think we can assume that
9 McDonald's did a reasonable job here. I
10 haven't heard anyone say that they did not do
11 a typical job. If it was interest earned,
12 that would definitely be what we're talking
13 about here. If it was revenues booked, that
14 would be what we're talking about here.

15 I have no reason to believe that
16 they didn't have adequate information, which
17 they say they believe they had.

18 Q. I understand that, but you just
19 don't know what they did or what they looked
20 at, correct?

21 MR. BRAUTIGAM: Objection.

22 Q. We don't have a copy of what they
23 looked at, do we?

24 MR. BRAUTIGAM: Objection.

25 A. We don't with precision have any

36 (Pages 138 to 141)

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1 **Preston**
 2 **copy. However, we know what is standard**
 3 **practice.**
 4 Q. OK, page 3 that you just referred
 5 to.
 6 A. Yes.
 7 Q. The language you were quoting.
 8 A. Yes.
 9 Q. Do you know what financial forecasts
 10 actually were used in their analysis?
 11 A. **It is ones prepared by management.**
 12 Q. Does it say that?
 13 A. Yes.
 14 Q. It says with "respect to financial
 15 forecasts used in our analysis."
 16 Which of the forecasts they received
 17 were actually used?
 18 A. **It says up above, "We have relied**
 19 **upon the accuracy and completeness of the**
 20 **representations, warranties and covenants of**
 21 **them contained in their agreement."**
 22 Q. Right.
 23 A. Does it say that they used those
 24 precisely? No. Does it say they used them as
 25 a basis? Yes.

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1 **Preston**
 2 Q. It says they used some, but we are
 3 not sure of exactly what they used, are we?
 4 A. Well, we assume that they didn't do
 5 anything that was out of line with what the
 6 company was telling the rest of the world.
 7 Otherwise they would have had a duty to
 8 disclose that as well.
 9 **Provident was making public its**
 10 **forecasts, and so therefore, if McDonald's was**
 11 **doing something that was grossly different and**
 12 **McDonald's felt that what Provident was doing**
 13 **was not accurate, they had an obligation to**
 14 **disclose that.**
 15 Q. What is the basis for your
 16 conclusion that as a result of the information
 17 you're talking about here, MacDonald's would
 18 have not rendered its fairness opinion or
 19 would have changed its fairness opinion?
 20 A. **What line are you on? I'm sorry.**
 21 Q. Maybe I -- let me ask you that
 22 differently. Is it your testimony that the
 23 information and the financial data that you
 24 have summarized in this section of your report
 25 would have caused McDonald's not to render its

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1 **Preston**
 2 fairness opinion or to have revised its
 3 fairness opinion?
 4 MR. BRAUTIGAM: Objection.
 5 A. I think it would have had to revisit
 6 its fairness opinion.
 7 Q. What does that mean?
 8 A. It means that given that it had
 9 certain projections that it used in its
 10 fairness opinion, it is beyond my
 11 comprehension that those projections would not
 12 have had to have been revisited given these
 13 changes in finances, unless they were told by
 14 the company that there wasn't, that their
 15 financial statements were incorrect.
 16 But if they had known the correct
 17 information that would require a revisiting to
 18 their process.
 19 Q. Are you able to testify or express
 20 an opinion beyond that though whether or not
 21 that revisiting in fact would have caused
 22 McDonald not to render a fairness opinion or
 23 to have changed its fairness opinion?
 24 MR. BRAUTIGAM: Objection.
 25 A. I think that they would have had to

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1 **Preston**
 2 **have revisited it.**
 3 Q. Beyond that you can't say?
 4 A. I do not have the ability to say
 5 they would have had to have changed it.
 6 Q. Page 21, paragraph 44, talks about
 7 the second announcement on April 15, 2003.
 8 A. Uh-huh.
 9 Q. What was your understanding of that
 10 second announcement and what it related to?
 11 Again, I'm not trying to do a memory test. If
 12 you want to refer to the press release, feel
 13 free.
 14 A. Well, let's do that, because it
 15 talks about the fact that this short time
 16 later, six weeks, they are revising their
 17 numbers again, restating them, as a result of
 18 a review by PWC, who came in and determined
 19 that their accounting, they were accounting
 20 for transactions as, um --
 21 Q. Direct finance leases?
 22 A. Thank you. Direct finance leases,
 23 that should have been accounted for as
 24 operating leases.
 25 Q. Is that a concept, that accounting

37 (Pages 142 to 145)

<p style="text-align: right;">Page 146</p> <p>1 Preston</p> <p>2 concept and the rules governing those two</p> <p>3 things, something that you're familiar with or</p> <p>4 an expert in?</p> <p>5 A. I'm not an expert in it.</p> <p>6 Q. But you're generally familiar with</p> <p>7 those concepts?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall what the substance</p> <p>10 of the April 15th announcement was beyond what</p> <p>11 you just said?</p> <p>12 A. Well, what the numbers were. And I</p> <p>13 believe they – I believe the April 15th</p> <p>14 announcement was one which said basically,</p> <p>15 Look, this changes our numbers at this time,</p> <p>16 but in the future we will see a positive</p> <p>17 impact from it.</p> <p>18 Q. Do you recall that as a result of</p> <p>19 the April 15th announcement the decision was</p> <p>20 made at the instance of PricewaterhouseCoopers</p> <p>21 that the Provident securitization, auto loan</p> <p>22 securitizations, had to be accounted for as</p> <p>23 operating leases? Do you recall that being</p> <p>24 the outcome of it?</p> <p>25 MR. BRAUTIGAM: Objection.</p>	<p style="text-align: right;">Page 148</p> <p>1 Preston</p> <p>2 identified at Provident and that spurred the</p> <p>3 SEC to take action?</p> <p>4 MR. BRAUTIGAM: Objection.</p> <p>5 A. Well, I recall some SEC action. I</p> <p>6 recall some regulatory, you know, the Fed</p> <p>7 looking into these things as well. So there</p> <p>8 was definitely interest in this accounting</p> <p>9 issue.</p> <p>10 Q. The second announcement on</p> <p>11 April 15th again changed the accounting for</p> <p>12 these auto lease securitizations and also</p> <p>13 increased the amount of the total restatement,</p> <p>14 correct?</p> <p>15 A. It did.</p> <p>16 Q. It clearly related to the same</p> <p>17 issue, the auto lease securitizations and the</p> <p>18 accounting for them, correct?</p> <p>19 MR. BRAUTIGAM: Objection.</p> <p>20 A. Well, that was part of it, yes.</p> <p>21 Q. It's true that the full story on the</p> <p>22 accounting for the auto lease securitizations</p> <p>23 and the size of the restatement was not fully</p> <p>24 and finally disclosed until April 15, 2003,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 147</p> <p>1 Preston</p> <p>2 A. Well, wasn't it kind of the other</p> <p>3 way? You had to account for them as operating</p> <p>4 leases and therefore we had to restate these</p> <p>5 previous years?</p> <p>6 Q. My question is, at the end of the</p> <p>7 day on April 15th, do you recall that they</p> <p>8 were characterized as operating leases as</p> <p>9 opposed to direct finance leases?</p> <p>10 A. Going forward.</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall why?</p> <p>14 A. I think it had to do with the</p> <p>15 insurance of the, um, and the way the</p> <p>16 insurance kicked in and the residual value.</p> <p>17 Q. Do you recall that subsequent to the</p> <p>18 Provident second announcement on April 15th</p> <p>19 that the SEC merging issues task force came</p> <p>20 out with a pronouncement relating to those</p> <p>21 kinds of insurance policies?</p> <p>22 A. I don't recall that.</p> <p>23 Q. Do you recall anything along the</p> <p>24 lines that other banks had similar issues as</p> <p>25 to the one that PricewaterhouseCoopers</p>	<p style="text-align: right;">Page 149</p> <p>1 Preston</p> <p>2 A. I would say the total story was not</p> <p>3 out until then, that's true.</p> <p>4 Q. What happened to the Provident stock</p> <p>5 price after the April 15, 2003 announcement?</p> <p>6 A. I don't think there was a</p> <p>7 statistically significant movement.</p> <p>8 Q. Did it go up or did it go down?</p> <p>9 A. I think it went up a few cents.</p> <p>10 Q. How about in the days and weeks</p> <p>11 following the April 15, 2003 announcement?</p> <p>12 A. I have a graph of the price. You</p> <p>13 can look at it if you want.</p> <p>14 Q. That's fine. If you would like to</p> <p>15 look at that, that's fine.</p> <p>16 A. Here we go. This is the graph and</p> <p>17 the supporting data on things.</p> <p>18 OK, here we are, April 15th, 2003.</p> <p>19 See this? This is March. This is the bank</p> <p>20 index up here. This is March.</p> <p>21 Q. Right.</p> <p>22 A. You can see following March</p> <p>23 Provident pretty much then generally goes up</p> <p>24 some, right?</p> <p>25 Q. Right.</p>

38 (Pages 146 to 149)

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1 Preston
 2 **A. Just about in lockstep with the –**
 3 **and that's exactly you recall when we did the**
 4 **regression analysis and we used this**
 5 **preperiod. What it finds is that except for**
 6 **these exceptional events, Provident acts**
 7 **pretty much like Midcap Bank, and it did in**
 8 **fact go up, just like the rest of the other**
 9 **things.**
 10 **But with this one major deviation.**
 11 **And it doesn't make up. You don't see all of**
 12 **a sudden, oh, it's back up here with these**
 13 **guys. No, it's the major deviation.**
 14 **Q. It wasn't up there with them before**
 15 **the major deviation.**
 16 **A. No, but you can see just visually.**
 17 **This is probably an inch and a quarter**
 18 **difference. Now we have got an inch and a**
 19 **half, an inch and a half and an inch and a**
 20 **half. It's a major deviation. It didn't make**
 21 **up the difference.**
 22 **Q. My question is – you're talking**
 23 **about the deviation on March 5th.**
 24 **A. Right.**
 25 **Q. I am talking about after April 15th,**

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1 Preston
 2 2003, when all the information was in, the
 3 Provident stock price rose thereafter.
 4 **A. With the market.**
 5 **Q. OK. And within 91 days after**
 6 **April 15th, 91 trading days after April 15th,**
 7 **it was in excess of that preannouncement price**
 8 **on March 4th, correct?**
 9 **A. Let's look at that. 91 –**
 10 **Q. – trading days.**
 11 **A. – trading days. So for a quarter.**
 12 **Q. Yes.**
 13 **A. So that would be April 15th –**
 14 **Q. Don't ask me to do math.**
 15 **A. – to July 15th. No, but you're**
 16 **saying trading days.**
 17 **Q. So it would be a little longer than**
 18 **that.**
 19 **A. Yeah, see, the law of course has to**
 20 **do with calendar days as opposed to trading**
 21 **days.**
 22 **Q. OK.**
 23 **A. So on April 15th the stock is at**
 24 **\$22.03.**
 25 **Q. And what did it do in the days after**

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1 Preston
 2 that, like the next day?
 3 **A. April 15th, 22, it went down a few**
 4 **cents just like it went up a few cents. The**
 5 **next day it's up a few cents. I mean, it's**
 6 **moving up right with the index. There's no**
 7 **question about the fact that it's moving up**
 8 **with the index.**
 9 **But I don't know what 91 trading**
 10 **days are.**
 11 **Q. Don't worry about it. Whatever it**
 12 **is, it is.**
 13 **A. But it's clear that the upward**
 14 **movement is an industrywide movement, not a**
 15 **Provident specific movement.**
 16 **Q. What was the name of the index that**
 17 **you used to track?**
 18 **A. The S&P Midcap Bank index.**
 19 **Q. Why did you use Midcap as opposed to**
 20 **the S&P 500 bank index?**
 21 **A. I believe Provident identified it.**
 22 **Q. Do you know if Provident performed**
 23 **in connection with the overall S&P 500 bank**
 24 **index?**
 25 **A. Might have looked at it. Didn't**

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1 Preston
 2 **keep it. Let me see.**
 3 **No, I didn't keep it.**
 4 **Q. I will show you a document which is**
 5 **attached to the affidavit of Tayfun Tuzun in**
 6 **this case, which is Exhibit 3, which compares**
 7 **the Provident stock price versus the S&P 500**
 8 **bank index, which indicates that from the**
 9 **period comparable to what you looked at,**
 10 **April 2nd, 2003, through the end of the year**
 11 **it outperformed the S&P 500 bank index.**
 12 **Do you dispute that?**
 13 **MR. BRAUTIGAM: I would just caution**
 14 **the witness to be extremely skeptical of**
 15 **anything Dr. Tuzun submits in this case.**
 16 **MR. BURKE: I think she will be.**
 17 **A. I don't know whether his data are**
 18 **accurate.**
 19 **Q. Fair enough.**
 20 **MR. BURKE: Off the record.**
 21 **(A luncheon recess was taken at**
 22 **12:25 p.m.)**
 23
 24
 25

39 (Pages 150 to 153)

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1 Preston

2 AFTERNOON SESSION

3 (Time noted: 1:15 p.m.)

4 CANDACE PRESTON, resumed

5 and testified further as follows:

6 EXAMINATION BY (Cont'd.)

7 MR. BURKE:

8 Q. Page 22 of your report, which we've
9 marked as Preston Deposition Exhibit 3.

10 A. Yes.

11 Q. Paragraph 46. You indicated you're
12 familiar with studies that have examined stock
13 price changes in response to earnings
14 restatements, and you list several of them.

15 A. Correct.

16 Q. Are those included in the materials
17 you brought with you today?

18 A. They are.

19 Q. The next statement is, "I have also
20 studied the price changes in Provident's stock
21 during the time period surrounding the
22 earnings restatement on March 5, 2003."23 Did you also conduct a study of
24 changes, price changes in Provident stock
25 following the second announcement on

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1 Preston

2 think we talked about before lunch. It was a
3 few cents up, a few cents down, but they
4 weren't statistically significant as I recall.5 Q. OK. Did that mean anything to you,
6 that the announcement of the second
7 restatement did not produce a statistically
8 significant change in the price of Provident
9 stock?10 A. It meant by the time they got around
11 to announcing that I think that the market was
12 kind of borne out by disappointments from
13 Provident. I think they're even notes that I
14 read to address questions indicated that and
15 the company said we know we've blown our
16 credibility basically. We're going to be
17 working to restore it. But --

18 Q. Other than --

19 A. The company said it wasn't going to
20 change their earnings going forward.21 Q. The earnings going forward were
22 going to increase, right?23 A. Well, actually what they said is
24 that earnings were going to be increased. But
25 2003 is going to be the same. So there was no

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1 Preston

2 April 15th?

3 A. Yes.

4 Q. And is that, the April 15th price
5 change announcement, reflected somewhere in
6 the report? I misspoke. Hang on for a
7 second.8 Is that analysis of the price
9 changes in Provident's stock following
10 April 15th reflected in your work, in your
11 report?12 A. I don't think it's specifically in
13 here, no.14 Q. So you did analyze it, but you
15 didn't address it in your report.

16 A. That's correct.

17 Q. Fair enough. Do you recall reaching
18 any conclusions about the price changes in
19 Provident stock following the second
20 announcement on April 15, 2003?21 A. I don't believe the movement was
22 statistically significant.

23 Q. For what period of time?

24 A. I looked at a number of days
25 following it. I don't think, you know, as I

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1 Preston

2 statistically significant change in the price
3 and that was it.4 Q. In your experience are future
5 earnings projections more important to
6 investors than historical earnings?7 A. Well, it depends. Future earnings
8 projections are very important and I would
9 never deny that. However, it also depends on
10 the basis. I have seen companies announce
11 historic restatements and they say, But
12 everything is going to be OK in the future,
13 and because probably the historic restatements
14 were so drastic, people don't believe them
15 about the future.16 So I can't quite parse out there
17 what's more important, but the credibility of
18 management is clearly a big issue in that kind
19 of situation.

20 Q. All right.

21 A. I guess the future earnings
22 projections are important if the past provides
23 adequate support for them to be reasonable.24 Q. OK. Do you recall reaching any
25 conclusion as it relates to Provident about

40 (Pages 154 to 157)

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1 Preston
 2 whether or not the past earnings were
 3 sufficient to cause the future earnings
 4 projections to be reasonable?
 5 **A. At what point in time?**
 6 Q. I don't know. Whatever point in
 7 time you were referring to in your prior
 8 answer.
 9 **A. Well, I was talking generally in my**
 10 **prior answer, but in Provident I would say**
 11 **that retrospectively the past earnings**
 12 **projections or the past earnings were not**
 13 **reasonable in terms of what the first**
 14 **restatement proved to be the case.**
 15 That in fact the earnings that were
 16 there weren't the actual earnings of the
 17 company. So that at any given time during the
 18 restatement period, had someone been doing a
 19 projection, they would have projected – they
 20 would have been way off.
 21 Q. Way off?
 22 **A. Yes.**
 23 Q. By how much?
 24 **A. Well, let's look at the earnings**
 25 **restatements, which are – and we'll just talk**

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1 Preston
 2 about the March 5th.
 3 Q. OK.
 4 **A. And if you see '97 you're off a**
 5 **couple of cents. '98 you're off four cents.**
 6 **'99 you're off 23 cents. It gets bigger.**
 7 **It's 31 cents, then 40 and then 39, roughly**
 8 **the same. So way off. You know, it's very**
 9 **large numbers.**
 10 Q. Then again, as we talked about, the
 11 only numbers available to the OHSL
 12 shareholders would have been '97, '98 and
 13 partially your numbers for '99.
 14 **A. Historic numbers, but not the only**
 15 **projections.**
 16 Q. What projections were provided in
 17 the proxy statement to OHSL shareholders?
 18 **A. I'm not aware of projections in the**
 19 **proxy statement.**
 20 Q. Page 22, second to last line, to
 21 give you context, you state in the fourth line
 22 from the bottom, "It is my opinion that had
 23 Provident restated its earnings for 1997, 1998
 24 and the first half of 1999, at the time the
 25 Proxy was issued, it would have significantly

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1 Preston
 2 altered the total mix of information."
 3 What is the source of your
 4 conclusion that that would have, quote,
 5 significantly altered the total mix of
 6 information?
 7 **A. The numbers that would be restated.**
 8 Q. How does one in your field of
 9 expertise measure what would or would not
 10 significantly alter the total mix of
 11 information?
 12 **A. One looks first of all at the**
 13 **numbers themselves, but one also – and I**
 14 **think the SEC guidelines are pretty**
 15 **comprehensive on this. It isn't just a**
 16 **numbers game. It's what the underlying**
 17 **information is.**
 18 So that if as you have suggested,
 19 that these nine transactions weren't actually
 20 booked as securitizations until the end of the
 21 year, but in fact one knew that they were
 22 going to be booked in the same improper manner
 23 and that was included in projections, then the
 24 fact that they were, that you were relying on
 25 those to determine what the future value of

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1 Preston
 2 the company would be, would be – they would
 3 be wrong. Then therefore the basis is wrong.
 4 So how do you decide what is
 5 material? You look at the numbers. You look
 6 what impacts it. You say what am I going to
 7 do and how am I going to do it.
 8 Q. Your question referred to
 9 projections again. And no projections were
 10 given to the OHSL shareholders, correct?
 11 **A. Not in the proxy statement.**
 12 Q. Do you know the source of the phrase
 13 "significantly altered the total mix of
 14 information," where that comes from?
 15 **A. Not off the top of my head, no.**
 16 Q. Is that your language or did someone
 17 give that to you?
 18 **A. It's certainly language I've used**
 19 **many times. So I don't know whether someone**
 20 **gave it to me, whether it came from a decision**
 21 **at some point. I don't recall.**
 22 Q. Fair enough.
 23 Paragraph 47, page 23. You state
 24 that "In addition, to the extent McDonald
 25 relied upon Provident's historic financials

41 (Pages 158 to 161)

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1 Preston

2 and/or Provident's stock price, in arriving at
3 its fairness opinion and the prescribed
4 Exchange Ratio, I believe it is likely
5 McDonald would have reexamined that opinion
6 based on the restatement and its impact on
7 future earnings."

8 What do you mean by that?

9 **A. I believe that it would have had to**
10 **have gone back, recomputed a number of things.**
11 **It would have had to have decided at that**
12 **point did it still believe it was a fair deal.**

13 Q. Earlier you indicated that if
14 McDonald looked at certain things they would
15 have had to have revisited their opinion.

16 **A. Yes.**

17 Q. Is this a similar opinion?

18 **A. Yes.**

19 Q. You're not saying they would have
20 changed their opinion, but they certainly
21 would have reexamined it.

22 **A. Exactly.**

23 Q. OK. Paragraph 49, page 23. Did you
24 derive the information in this paragraph from
25 the Fuerman report?

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1 Preston

2 of Provident in 1998 in the proxy statement in
3 fact were \$2.48 a share?

4 **A. There were some adjustments. So**
5 **these numbers are the appropriate numbers.**

6 Q. I understand.

7 Given that one-year growth rate from
8 248 to 308 that you just talked about as a
9 financial analyst and given your area of
10 expertise, would it be reasonable to then
11 assume that Provident stock necessarily would
12 have increased 24 percent each year or
13 earnings would have increased 24 percent each
14 year from 1999 through 2005?

15 MR. BRAUTIGAM: Objection.

16 **A. No, I think the forecasts were for**
17 **like 23 to 24 percent, were 20 percent the**
18 **next year, 18 to 20 percent thereafter.**

19 Q. So to merely extrapolate that 24
20 percent one-year earnings growth out till 2005
21 would not be a reasonable approach to value
22 the Provident stock price, Provident earnings,
23 correct?

24 MR. BRAUTIGAM: Objection.

25 **A. Not if you had another basis.**

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1 Preston

2 **A. Do you mean these numbers?**

3 Q. Yes.

4 **A. I think these numbers are right in**
5 **my table.**

6 Q. Which table are we referring to?
7 The one at the end, Exhibit F?

8 **A. No. Right here in the body of the**
9 **report you can pretty much -- you can see on**
10 **page 21, for example, that if one were to**
11 **divide net income reported in '99 by 308, by**
12 **the -- I'm sorry, I will wait until you get**
13 **there.**

14 Q. I got you.

15 **A. You divide 308 by the 248 in 1999,**
16 **in 1998 that is 24 percent approximately. Or**
17 **if you go down and instead divide -- I'm**
18 **sorry, we need to go to the other. On page**
19 **21, the restated numbers, and divide 258 by**
20 **238, that's 8 percent growth. So if that's**
21 **what you're talking about, that's...**

22 Q. That's where the number is coming
23 from?

24 **A. Yes, it's straightforward math.**

25 Q. Do you know if the reported earnings

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1 Preston

2 Q. Page 24, paragraph 50, at the top.

3 "A change in the value of Provident's stock at
4 the time of the Merger would have, in all
5 likelihood, necessitated a revision to the
6 recommended Exchange Ratio of Provident shares
7 for each OHSL share."

8 What do you mean by that?

9 **A. Well, I think I provide a table here**
10 **of what would have happened if, depending.**
11 **Someplace in this report there's a table that**
12 **shows what happens when the stock price of**
13 **Provident changes.**

14 Q. Page 29.

15 **A. That's correct.**

16 Q. OK.

17 **A. So we see that if the Provident**
18 **stock price goes down 10 percent, the exchange**
19 **ratio changes. If it goes down 15 percent,**
20 **there's no -- that's a walkaway situation, a**
21 **renegotiation situation, whatever, but the**
22 **exchange ratio...**

23 Q. OK, staying on that page 29,
24 paragraph 60, you do state that you have not
25 been asked to quantify the impact on Provident

42 (Pages 162 to 165)

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1 Preston
 2 stock of a restatement at the time of the
 3 merger, correct?
 4 **A. That's correct.**
 5 Q. And you have not done so.
 6 **A. I have not done so.**
 7 Q. So the stock price changes that are
 8 reflected in your table are hypothetical.
 9 **A. I believe it says hypothetical.**
 10 Q. OK.
 11 **A. It says hypothetical, but declines I**
 12 **think could reasonably be anticipated.**
 13 Q. The actual impact on Provident stock
 14 in the restatement at the time of the merger,
 15 that's not part of your opinion.
 16 **A. That's not part of my opinion.**
 17 Q. Thank you.
 18 Page 24. You're talking about the
 19 nature of the restatement.
 20 **A. Yes.**
 21 Q. You talk about a number of
 22 characteristics.
 23 **A. Yes.**
 24 Q. First is "is the restatement
 25 voluntary?"

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1 Preston
 2 **A. Correct.**
 3 Q. Provident's was voluntary, correct?
 4 **A. It was.**
 5 Q. Number two, "did management
 6 intentionally overstate earnings?"
 7 Do you have any understanding one
 8 way or the other about whether or not there
 9 was anything intentional here?
 10 **A. I have not seen anything that**
 11 **indicated it was in the – now, I guess it**
 12 **depends on what, which restatement we're**
 13 **talking about. I haven't seen anything that**
 14 **indicated the March 5th restatement was**
 15 **intentional.**
 16 **And the April restatement would not**
 17 **fall into the category that, where I would**
 18 **think intentional was negative. It was a –**
 19 **it wasn't, um –**
 20 Q. Nobody did anything wrong.
 21 **A. They followed the accountant's**
 22 **advice.**
 23 Q. Right. The next characteristic is
 24 "are the company's internal controls
 25 vulnerable?"

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1 Preston
 2 Did you reach any conclusions about
 3 that as it relates to Provident's internal
 4 controls overall?
 5 **A. Yes.**
 6 Q. What conclusion did you reach?
 7 **A. That its internal – not only did I**
 8 **reach this conclusion, but all the commentary**
 9 **I read about the March 5th restatement leads**
 10 **to the conclusion that their – there was**
 11 **something seriously wrong with the internal**
 12 **controls.**
 13 Q. Do you know whether or not that
 14 commentary that you read, those writers had
 15 any firsthand knowledge regarding Provident's
 16 internal controls?
 17 **A. Those writers had the knowledge of**
 18 **the restatement, what was said about the**
 19 **restatement, and the fact that it had covered**
 20 **six years.**
 21 Q. My question is, do you know whether
 22 they knew anything firsthand about existence
 23 sufficiency or anything else of Provident's
 24 internal controls, what they actually had in
 25 place?

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1 Preston
 2 **A. Well, they weren't sufficient. I**
 3 **mean, they certainly had – they had the**
 4 **absolute evidence that they weren't sufficient**
 5 **because they had to restate it.**
 6 Q. Is it your testimony that none of
 7 the internal controls were sufficient or that
 8 there was a failure in maybe one?
 9 **A. They were inadequate.**
 10 Q. All of them?
 11 **A. All of them taken together did not**
 12 **prevent this. So whether they were all –**
 13 **they all taken together did not prevent it.**
 14 **Whether it was one that caused the problem,**
 15 **the other ones didn't catch it.**
 16 Q. So if I'm correct your conclusion
 17 about the internal controls is based upon the
 18 fact that it existed, the fact that this
 19 occurred.
 20 MR. BRAUTIGAM: Objection.
 21 **A. The fact that this occurred, the**
 22 **fact that it occurred over six years. This**
 23 **was not a one-time kind of issue thing. It**
 24 **was something that went undetected for six**
 25 **years. The fact that market commentators**

43 (Pages 166 to 169)

<p style="text-align: right;">Page 170</p> <p>1 Preston</p> <p>2 commented on the problem with their internal</p> <p>3 controls.</p> <p>4 Q. The next characteristic you talk</p> <p>5 about is "will the restatement affect future</p> <p>6 earnings?"</p> <p>7 A. Yes.</p> <p>8 Q. Now, with respect to the March 5,</p> <p>9 2003, your conclusion was that at least for</p> <p>10 the next succeeding period it would have some</p> <p>11 impact, correct?</p> <p>12 A. And thereafter.</p> <p>13 Q. What about for the announcement on</p> <p>14 April 15th?</p> <p>15 A. The announcement than April 15th was</p> <p>16 that it would have impact as well.</p> <p>17 Q. And would that be a positive or</p> <p>18 negative impact?</p> <p>19 A. The company said that it would be</p> <p>20 positive.</p> <p>21 Q. Later in that paragraph 51</p> <p>22 statement, four lines up from the bottom, the</p> <p>23 sentence begins "Obviously."</p> <p>24 A. Yes.</p> <p>25 Q. "Obviously, intentional errors made</p>	<p style="text-align: right;">Page 172</p> <p>1 Preston</p> <p>2 The net income during this time</p> <p>3 period on a per share basis, for example, in</p> <p>4 2001, the reported was 45 cents. 40 cents</p> <p>5 leaves it with net income of five cents. So</p> <p>6 it's a very -- it virtually wipes it out.</p> <p>7 Q. But the other years were</p> <p>8 substantially smaller than that, correct?</p> <p>9 That's the largest in fact --</p> <p>10 A. Yeah, I think that my sentence says</p> <p>11 that. It grew in significance.</p> <p>12 Q. Do you know why in 2001 Provident's</p> <p>13 earnings were, its net income was</p> <p>14 comparatively less than it was in the other</p> <p>15 years on your chart?</p> <p>16 A. I think in 2001 it, um, I think if</p> <p>17 we look on the stock price chart you will see</p> <p>18 beginning in 2001 it had some negative</p> <p>19 results, some of which were unexpected.</p> <p>20 I remember in the third quarter</p> <p>21 there was quite a bit of concern about the</p> <p>22 fact that the results were unexpected below</p> <p>23 what people expected.</p> <p>24 In the fourth quarter nonperforming</p> <p>25 assets and problems with loans caused the, um,</p>
<p style="text-align: right;">Page 171</p> <p>1 Preston</p> <p>2 by dishonest managers are the most egregious</p> <p>3 and have the largest negative impact on stock</p> <p>4 prices."</p> <p>5 In your career you have seen</p> <p>6 situations where that occurred, correct?</p> <p>7 A. I have.</p> <p>8 Q. Do you have any basis for claiming</p> <p>9 that what had occurred at Provident was an</p> <p>10 intentional error made by dishonest managers?</p> <p>11 A. No.</p> <p>12 Q. Page 25. Up at the top in the first</p> <p>13 sentence that begins on that page, "Second,</p> <p>14 the amount of the earnings variance grew in</p> <p>15 significance, year to year, and wiped out a</p> <p>16 large percentage of reported earnings in the</p> <p>17 latter years."</p> <p>18 That deals with the March 5th, 2003</p> <p>19 announcement, am I correct?</p> <p>20 A. Yes. But you can look at, let's</p> <p>21 look at the charts and just see. You can see.</p> <p>22 If we look on page 20, we can see that the,</p> <p>23 here the variance is growing, and we talked</p> <p>24 about it, 2 cents, 4 cents, 23 cents, 31</p> <p>25 cents, 40 cents, 39 cents.</p>	<p style="text-align: right;">Page 173</p> <p>1 Preston</p> <p>2 I don't know. If there were no earnings in</p> <p>3 the fourth quarter, there were almost no</p> <p>4 earnings at all. So I think it went from --</p> <p>5 the market had anticipated maybe 70 cents and</p> <p>6 it went to two cents or something like that,</p> <p>7 but there were very poor earnings.</p> <p>8 Q. And obviously -- do you have any</p> <p>9 understanding as to whether or not any of</p> <p>10 those factors were known or could have been</p> <p>11 anticipated back in 1999?</p> <p>12 A. The fact that they reported 45 cents</p> <p>13 would not have been anticipated. The fact</p> <p>14 that there was a 40 cent divergence could have</p> <p>15 been anticipated. Because remember, we're</p> <p>16 talking about loans in '97, '98, and '99.</p> <p>17 So we're not looking here at the</p> <p>18 actual numbers in net income, but the</p> <p>19 divergence could have been known.</p> <p>20 Q. Do you recall that Provident went</p> <p>21 off gain on sale accounting?</p> <p>22 A. Yes.</p> <p>23 Q. In 2001 also?</p> <p>24 MR. BRAUTIGAM: Object. I don't</p> <p>25 believe it's accurate.</p>

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1 Preston
 2 A. No, I think it was in 2000. I think
 3 it was August of 2000.
 4 Q. And what period was that effective?
 5 A. I think it may have been effective
 6 in 2001, but the announcement came in 2000 and
 7 the anticipated impact of it I believe was
 8 announced in August of 2000.
 9 Q. Right. But my question is, it was
 10 first reflected in the numbers to the best of
 11 your knowledge in 2000 and 2001.
 12 MR. BRAUTIGAM: Objection.
 13 Q. If you know.
 14 A. It was first reflected in the
 15 numbers probably in 2000 - I'm trying to
 16 remember the press release, which I have in my
 17 file here, where they announced that they
 18 anticipated the change. I think the date was
 19 like August 22nd, or something like that, of
 20 2000. And they announced that the stock drops
 21 because the earnings, the projected earnings
 22 going forward are going to be less. But they
 23 did change.
 24 But clearly, the big surprise in
 25 2001, the fourth quarter where there were

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1 Preston
 2 Q. That didn't occur with Provident,
 3 did it?
 4 A. No.
 5 Q. For either restatement announcement.
 6 A. That's correct.
 7 Q. Page 26, paragraph 55. You talk
 8 about your event study.
 9 A. Yes.
 10 Q. I think you talked a little bit
 11 earlier about how you do an event study and
 12 how you did yours in this case, correct?
 13 A. Correct.
 14 Q. The first full sentence on page 27
 15 states, "The calculation is done in order to
 16 measure the price change caused by
 17 company-specific information being released to
 18 the market as opposed to factors that may
 19 effect the market in general or the industry
 20 in which the company participates."
 21 A. Correct.
 22 Q. That is what you were talking about
 23 earlier when you were talking about dependent
 24 variables?
 25 A. Correct.

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1 Preston
 2 virtually no earnings was because of
 3 nonperforming loans and a very upset stock
 4 market about that. Specifically I remember
 5 comments regarding the fact that much worse
 6 than anybody expected, and they had expected
 7 them to be in line with other banks and they
 8 were not in line with other banks.
 9 Q. The next sentence in paragraph 51,
 10 page 25, "Finally, the change in accounting
 11 was expected to be recurring and negatively
 12 impact future earnings."
 13 Again, that is the statement with
 14 respect to the March 5, 2003 restatement
 15 announcement, not the announcement on
 16 April 15th.
 17 A. Correct.
 18 Q. The last sentence in that section
 19 says, "Studies have shown that earnings
 20 restatements based on accounting
 21 irregularities, including revenue recognition
 22 problems, are typically accompanied by stock
 23 price declines in excess of 30 percent."
 24 Do you see that?
 25 A. Yes.

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1 Preston
 2 Q. And you further indicated that you
 3 used the S&P Midcap Banks Index.
 4 A. Yes.
 5 Q. Did you run the event study with
 6 respect to any other bank index, indices?
 7 A. I may have. I don't recall.
 8 Q. Would it be reflected in your work
 9 papers or not?
 10 A. Only things I saved are reflected in
 11 there. So...
 12 Q. Your event study was done for the
 13 period January 2002 through December 2002.
 14 A. Correct.
 15 Q. Did you do any event study for the
 16 year 1998?
 17 A. No.
 18 Q. Did you do one for 1999?
 19 A. No.
 20 Q. 2000?
 21 A. I don't believe so.
 22 Q. Or 2001.
 23 A. No.
 24 I can tell you, I will offer,
 25 looking at just the graph I have, that I would

45 (Pages 174 to 177)

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1 Preston
2 **be surprised if there wasn't a very strong**
3 **relationship in any of these years, and I can**
4 **show you here how.**
5 **Except for company-specific**
6 **deviation days, the relationship is quite**
7 **remarkable. The R square on this in 2002 was**
8 **over 50 percent. That's an extremely high**
9 **relationship. And the graph bears it out. So**
10 **I would expect the relationship to be very**
11 **similar.**
12 Q. But you didn't do that study.
13 A. Haven't done it.
14 Q. In the middle of the page, page 27,
15 "using these results I observed that on
16 March 5, 2003, the day Provident announced it
17 was restating its financial results,
18 Provident's stock declined by approximately 20
19 percent in excess of market or industry
20 movement. This 20 percent one-day price
21 decline was statistically significant at the
22 99 percent level."
23 A. Yes.
24 Q. Did you do an event study for
25 Provident stock after April 15, 2003?

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1 Preston
2 **A. I think you asked me that before. I**
3 **know we looked at it. Yes.**
4 Q. It's not detailed in your report
5 though.
6 A. No.
7 Q. We've talked earlier about why you
8 believed that if the earnings had been or if
9 the restatement had been made or had been in
10 effect at the time of the merger why it would
11 have been material, correct? We talked about
12 your views on that.
13 A. Yes.
14 Q. Page 28, number 59. You talk about
15 your analysis of the walk-away price, am I
16 correct?
17 A. Right.
18 Q. On page 29 up at the top you state,
19 "Assuming prior to close of the Merger,
20 Provident announced a restatement of earnings
21 for 1997, 1998 and the first half of 1999, and
22 also disclosed that future earnings would be
23 negatively impacted by the change in
24 accounting, it is my opinion that such a
25 disclosure would have caused a material

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1 Preston
2 decline in the price of Provident stock."
3 I believe that you believe that
4 would have happened, but you didn't calculate
5 that.
6 MR. BRAUTIGAM: Objection.
7 A. I didn't quantify it.
8 Q. Didn't quantify it. And you didn't
9 quantify precisely how earnings would have
10 been impacted in the first half of 1999 based
11 upon what was disclosed in the restatement.
12 MR. BRAUTIGAM: Objection.
13 A. And I have assumed that that
14 restatement was spread across the year.
15 Q. You have assumed that.
16 A. Yes.
17 Q. And you don't know that to be the
18 fact.
19 A. No. But as I said, and I've said
20 several times, that management, you know, the
21 expectation that the earnings would continue
22 was in the market at that point and therefore
23 it's, um, was a – and management met the
24 expectations. So I don't think that there's a
25 question about whether it would have impacted

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1 Preston
2 it or not. It would have.
3 Q. When you did your event study and
4 looked at the results with respect to what
5 happened on March 5, 2003, and reached your
6 conclusions about the impact on the Provident
7 price, what you were looking at was the impact
8 on the Provident stock price of the cumulative
9 restatement number that was known as of that
10 day, correct?
11 A. Well, that's one of the things that
12 would cause the impact, yes.
13 Q. We know that had the restatement
14 occurred in 1999 that cumulative number would
15 have been substantially lower than what was
16 announced on March 5, 2003, don't we?
17 A. Well, we know that those same
18 numbers, those same contracts would have been
19 in place. Just as they were still in place in
20 2003, right? And yet they were going to
21 continue to have, those same contracts would
22 continue to have a negative impact on
23 Provident stock going forward as shown in the
24 press release. It's not that, um -- so that
25 what they have said here is that the

46 (Pages 178 to 181)

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1 Preston

2 previously announced earnings per share
3 outlook for 2003.

4 This isn't for March of 2003 or
5 2002. This is 2003 and going forward we are
6 reducing our earnings.

7 Q. By 20 cents.

8 A. By 20 cents. The company's
9 expectation is that the impact of that matter
10 will be significantly less in 2004 and in
11 future years. So of course it will be less.
12 These are auto loans. Auto loans aren't for
13 twenty years.

14 I would imagine the securitizations
15 are either packaged by year. So we have got
16 the three-year loans in one securitization or
17 the four-year loans, or they're diversified,
18 but most auto loans are three to six years.
19 So of course if they are written in '97
20 through '99, the impact is going to be less.

21 Is it going to be less in '99 if you
22 announce it and you have done it for six
23 years? I don't think it's going to be a lot
24 different than it was.

25 Q. Even if you're calculating it

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1 Preston

2 impact is the same.

3 Q. Not if you get it right. Not if you
4 find the error and fix it.

5 MR. BRAUTIGAM: Objection.

6 A. They found the error and fixed it in
7 March of 2003.

8 Q. Correct?

9 A. Did the impact disappear? No. It
10 continued through the end of 2003 and was
11 expected to have less impact going forward
12 because, voila! Auto loans only last a
13 relatively short amount of time.

14 Q. If there was an error in estimating
15 income and expense, the error was detected in
16 '99 and the estimates were revised, is it your
17 testimony that the earnings would have
18 continued to be off in those years after that?

19 MR. BRAUTIGAM: Objection.

20 A. Not the earnings, but the future
21 estimate of earnings would change.

22 Q. So it's the forward looking
23 projections.

24 A. Yes. So that you would -- at that
25 point, any point in time where you caught

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1 Preston

2 correctly?

3 A. Well, that's what they're doing now,
4 isn't it? In 2003 they're starting to
5 calculate it correctly, and it's still going
6 to affect 2003 and future years, even though
7 they were written back in '97 through '99.

8 Q. My point though is, if you look at
9 the cumulative effect, I mean, you assessed on
10 March 5, 2003 the impact on the price through
11 your event study of the \$77 million
12 restatement amount that was first announced.

13 A. Correct.

14 MR. BRAUTIGAM: Objection, 77
15 million?

16 MR. BURKE: Whatever, \$70 million.

17 Q. Had the number been disclosed in
18 1999 -- excuse me. It would have been \$2.9
19 million for the years 1997, 1998 and less than
20 \$11 million for 1999, correct?

21 MR. BRAUTIGAM: Objection.

22 A. But the future would have been
23 different. See, the cumulative impact isn't
24 just what's happened. It's what is going to
25 happen in the future. So the cumulative

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1 Preston

2 this, you would have corrected the past. But
3 you would have had to change and let the world
4 know that you had changed and that was going
5 to affect the future as well. And it was
6 going to affect the future a large amount.

7 Q. I see what you're saying.

8 Page 29 at the bottom, "I believe
9 that, at a minimum, it" -- and I believe it's
10 the impact on the merger, "would have changed
11 the Exchange Ratio and likely would have
12 caused the OHSL shareholders to vote against
13 the Merger with Provident."

14 What's the basis for your statement
15 that it would likely would have caused the
16 OHSL shareholders to vote against the merger?
17 We talked about this a little bit before.

18 I take it you hadn't talked with any
19 OHSL shareholders or conducted any research
20 into them as to what they would have done.

21 MR. BRAUTIGAM: Objection.

22 Q. Is that true?

23 A. That's true. We have gone over this
24 for a large portion of today at this point.
25 But we're talking about at this point so many

47 (Pages 182 to 185)

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1 Preston
2 problems with this deal in terms of if the
3 proper disclosures had been made. If we had
4 Provident on top of, number one, you have got
5 board members who don't want to vote for the
6 deal or don't think it's in the shareholders'
7 interest who resign, and they're doing it
8 based on wrong numbers to begin with.

9 You had board members who weren't in
10 favor of the deal, but voted for it. Would
11 they have voted for it to begin with if they
12 had had the correct Provident numbers and
13 known that Provident's future was going to
14 look a whole lot different than what Provident
15 had been telling people?

16 You put that together with the fact
17 that Herron resigned because he didn't want
18 this merger to go through, that Mr. Hanauer
19 didn't believe it was in the best interests of
20 the shareholders.

21 Given the closeness of this vote and
22 the convergence of all those things being
23 disclosed, it is very, very difficult for me
24 to believe they wouldn't have gotten another
25 twenty-some thousand shares that changed the

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1 Preston

2 didn't you?

3 A. Yes.

4 Q. Did you read the part where
5 Mr. Herron testified that when he read the
6 proxy he made no effort to contact anyone to
7 indicate that in fact his position was not
8 adequately disclosed?

9 A. I don't recall.

10 Q. Tell me about the mosaic theory.
11 It's a wonderful phrase. Is that your phrase
12 or is that --

13 A. Oh, no, it's a --

14 Q. OK.

15 A. It's a common finance literature
16 thing. It's certainly -- I think it actually
17 grows out of legal doctrine, but I'm not
18 certain of the case from which it's taken.

19 But the idea is that information
20 isn't possessed in isolation, that all of us
21 look at the sum of things and therefore to say
22 is one thing material and ignore the
23 environment in which it is received would not
24 be the correct way to do it.

25 I think actually this goes right to

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1 Preston
2 way they voted.

3 Q. But that's not based upon any
4 research.

5 A. Any math?

6 Q. No, any research into the specifics
7 of the OHSL shareholder base.

8 A. No, it's looking at other
9 shareholders and what other shareholders have
10 done.

11 Q. And your conclusions as to
12 Mr. Hanauer, Mr. Herron, we've already talked
13 about those already today, have we not, in
14 terms of what that's based upon?

15 A. Well, we've talked about the fact
16 that what Mr. Hanauer has testified to, we
17 talked about the fact that he didn't, you
18 know, as of the August 2nd meeting, he said
19 that he just gave in. So we probably covered
20 pretty much what...

21 Q. OK.

22 A. Over lunch I did look at an
23 affidavit of Mr. Herron's, so that that merely
24 supported what I already believed. That --

25 Q. You did read Mr. Herron's testimony,

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1 Preston

2 the heart of the SEC opinion on materiality
3 and the fact that -- and that's one of the
4 reasons that one can't just say a rule of
5 thumb on what number is material.

6 Q. How often in your experience do
7 projections in one year remain unchanged for
8 the entire period of those projections?

9 A. If you mean unchanged completely
10 unchanged? That doesn't happen very often.

11 Q. Projections frequently get adjusted
12 from year to year, period to period, do they
13 not?

14 A. Sure.

15 Q. You wouldn't in reviewing any
16 company expect projections made in 1999 to
17 remain unchanged through 2003, would you?

18 A. It would be unusual.

19 MR. BURKE: I have no further
20 questions.

21 EXAMINATION BY

22 MR. HILLER:

23 Q. My name is Robert Hiller. I
24 represent Dinsmore & Shohl law firm and two of
25 the partners, Cliff Roe and Charles Hertlein.

48 (Pages 186 to 189)

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1 Preston
 2 You don't hold yourself out as an
 3 expert in legal malpractice, do you?
 4 **A. I do not.**
 5 Q. Were you asked to give expert
 6 opinions concerning the law firm and the two
 7 attorneys that I represent?
 8 **A. I was asked to talk about**
 9 **materiality and the things in my report. I**
 10 **haven't addressed it to those issues.**
 11 Q. So your opinions and comments as
 12 well in this case have not been about the acts
 13 or inactions of Dinsmore & Shohl or Mr. Roe or
 14 Mr. Hertlein?
 15 **A. My opinions are based on the**
 16 **materiality of information that was not**
 17 **disclosed. They are not – have nothing to do**
 18 **with the liability of people to disclose them.**
 19 **So maybe a jury would find that your clients**
 20 **are liable for those nondisclosures, but that**
 21 **isn't my province.**
 22 MR. HILLER: I don't have any other
 23 questions.
 24 MR. BRAUTIGAM: I will have some
 25 questions. Let's take a short break.

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1 Preston
 2 (A recess was taken.)
 3 MR. BRAUTIGAM: Mark this as Preston
 4 Exhibit 4.
 5 (Preston Exhibit 4, 4-paged
 6 document, Affidavit of Thomas M. Herron,
 7 marked for identification, this date.)
 8 EXAMINATION BY
 9 MR. BRAUTIGAM:
 10 Q. Good afternoon, Ms. Preston. As you
 11 know, my name is Michael G. Brautigam and I
 12 represent Walter Thiemann, Gary and Lisa Meier
 13 and a putative class of OHSL shareholders.
 14 Ms. Preston, I want to pick up with
 15 the question that Mr. Burke asked at the end
 16 of his examination. He asked if you would
 17 expect projections to remain unchanged from
 18 year to year going out for several years.
 19 I think you said no; is that
 20 correct?
 21 **A. Yeah, I said that they – not**
 22 **exactly unchanged.**
 23 Q. Would you expect the projections to
 24 be reasonable when made?
 25 **A. Yes.**

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1 **Preston**
 2 Q. When you worked on fairness
 3 opinions, including a fairness opinion for
 4 a \$3 billion transaction, was that your
 5 expectation; that is to say, that the
 6 projections that you were relying upon in
 7 rendering the fairness opinion were reasonable
 8 when made?
 9 **A. Yes.**
 10 Q. Is that how investment bankers
 11 working on fairness opinions perform their
 12 work?
 13 **A. It should be.**
 14 Q. Let's talk a little bit about your
 15 background. Is it fair to say that you have
 16 been doing work related to investment banking
 17 and/or valuations for almost a quarter century
 18 now?
 19 MR. BURKE: Objection, leading.
 20 **A. Yes.**
 21 Q. And in the course of that time
 22 you've been qualified as an expert witness in
 23 federal and state courts throughout the
 24 country, correct?
 25 **A. Yes.**

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1 **Preston**
 2 Q. And do you believe that your opinion
 3 in this case would assist the jury, the trier
 4 of fact, in understanding the purposes of
 5 proxy materials?
 6 MR. BURKE: Continuing objection,
 7 leading.
 8 **A. Yes.**
 9 Q. Now, Ms. Preston, other than what is
 10 in your report do you have a shorthand version
 11 you can share with us today as to the function
 12 of proxy materials?
 13 MR. BURKE: Objection, speculation,
 14 form.
 15 **A. Other than what's in my report, I**
 16 **don't know exactly the words I used in my**
 17 **report, but the proxy materials are there to**
 18 **inform shareholders, give them the best**
 19 **complete idea of the true condition of a**
 20 **company so they can make the most informed**
 21 **decision.**
 22 Q. Now, when you started your
 23 deposition today you raised your right hand
 24 and swore to tell the truth, the whole truth
 25 and nothing but the truth.

49 (Pages 190 to 193)

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1 Preston

2 Do you remember that?

3 **A. Yes.**

4 **Q. Do you believe that in substance the**
5 **proxy materials should tell the truth, the**
6 **whole truth and nothing but the truth about**
7 **the merger at issue?**

8 **MR. BURKE: Objection, speculation,**
9 **leading.**

10 **A. Yes.**

11 **Q. Do you believe that these proxy**
12 **materials, Defendant's Exhibit 1 in front of**
13 **you, tell the truth, the whole truth and**
14 **nothing but the truth about the merger between**
15 **OHSL and Provident?**

16 **MR. BURKE: Continuing objection to**
17 **leading and speculation. You may answer.**

18 **A. No.**

19 **Q. Why not?**

20 **A. I guess for all the reasons that are**
21 **in my report, the financials on which -- the**
22 **Provident financials are not accurate. It**
23 **doesn't -- the proxy materials do not disclose**
24 **Mr. Herron's resignation, nor the reason for**
25 **it. The proxy materials don't disclose the**

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1 Preston

2 Continuing objection on those bases,
3 please.

4 **A. It's been my experience and I think**
5 **the experience of probably anybody who sits on**
6 **a jury that unanimous means everyone votes for**
7 **it. If people don't vote for it, it's noted.**

8 **If it was unanimous by five directors, you**
9 **could say unanimous by five directors if there**
10 **were only five present.**

11 **If there were more than five**
12 **present, you could maybe say five voted for,**
13 **none no vote, if you didn't want to say**
14 **abstain. But you could not say unanimous if**
15 **there were more than five present.**

16 **I think that Mr. Burke suggested**
17 **Robert's Rules of Order and the fact that**
18 **Mr. Brinker didn't vote because he was not**
19 **breaking -- he was breaking a -- would not**
20 **have been breaking a tie. But Mr. Brinker**
21 **voted before when he wasn't breaking a tie.**

22 **So I don't -- it is very difficult**
23 **for me to understand, given all the**
24 **circumstances around this, how anyone could**
25 **possibly have thought it was unanimous.**

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1 Preston

2 **fact that Mr. Hanauer in opposition to his**
3 **belief that this was not a good transaction**
4 **for shareholders voted for it.**

5 **The proxy materials talk about the**
6 **unanimity of a vote by the board of directors,**
7 **and I don't see how anyone could conclude the**
8 **vote was unanimous. The proxy materials do**
9 **talk about the unanimous vote of the board and**
10 **don't disclose that the board that voted**
11 **unanimously was not the board about which all**
12 **the other discussions in the background**
13 **relate. It was minus Mr. Herron.**

14 **And the proxy materials are not full**
15 **and complete disclosure about the**
16 **securitization.**

17 **Q. With respect to the unanimous vote**
18 **that's reflected in Defendant's Exhibit 1, the**
19 **defendants have suggested at depositions and**
20 **also in court papers that the five to nothing**
21 **vote really was unanimous because no one voted**
22 **against the merger.**

23 **What do you have to say about that?**

24 **MR. BURKE: Objection, leading,**
25 **argumentative, calls for speculation.**

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1 Preston

2 **Q. Ms. Preston, based on two board**
3 **meetings it's possible to conclude, is it not,**
4 **that OHSL did not follow consistently Robert's**
5 **Rules of Order, correct?**

6 **MR. BURKE: Objection.**

7 **Q. And that's based on a July 22nd**
8 **board meeting and the August 2nd board**
9 **meeting.**

10 **MR. BURKE: Continuing objection to**
11 **leading.**

12 **A. Well, it certainly would appear that**
13 **Mr. Brinker did two different things under the**
14 **same circumstances.**

15 **Q. About ten days apart, correct?**

16 **A. Correct.**

17 **Q. Would you please thumb through**
18 **Defendant's Exhibit 1 and find the merger**
19 **agreement which is included in the proxy**
20 **materials.**

21 **MR. BURKE: As yesterday,**
22 **Mr. Brautigam, I need to run to the**
23 **airport to catch a flight. And given the**
24 **nature of the testimony to date, I will**
25 **lodge a continuing objection to leading,**

50 (Pages 194 to 197)

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1 Preston
 2 to speculation, lack of foundation, and
 3 to argumentative.
 4 So thank you. Have a safe trip
 5 home, folks.
 6 MR. BRAUTIGAM: Likewise.
 7 Q. What is the date of the merger
 8 agreement?
 9 **A. I believe the date of the merger**
 10 **agreement is – I believe it's August 2nd.**
 11 **There it is, August 2nd, 1999.**
 12 Q. Now, do you remember Mr. Burke
 13 suggesting the date of August 27th, 1999, when
 14 he represented to you that the board, in his
 15 terms, unanimously approved the merger because
 16 everyone was in the room and everyone voted?
 17 Do you remember questioning like
 18 that?
 19 **A. I do.**
 20 Q. Is that consistent with your
 21 understanding of the requirements of a board
 22 of directors?
 23 **A. Well, the requirements of the board**
 24 **of directors is to vote on the merger at the**
 25 **time. I don't know of any requirement to**

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1 Preston
 2 **affirm it later, but you vote on it at the**
 3 **time.**
 4 Q. Is there any reference that you
 5 found to a board meeting on August 27th, 1999?
 6 **A. No, I didn't see any record of that.**
 7 Q. In fact, it wouldn't make sense from
 8 a common sense point of view to approve a
 9 transaction retroactively that has already
 10 been signed and agreed to, correct?
 11 **A. And announced, no.**
 12 Q. And announced. Do you remember in
 13 your reading of Mr. Hanauer's testimony that
 14 you said yes, I believe the intent of the
 15 proxy materials is to refer to the August 2nd,
 16 1999 vote throughout?
 17 **A. I don't remember that clearly, but**
 18 **I'm sure – I don't remember it.**
 19 Q. Ms. Preston, has your expert report
 20 been informed by what you've referred to as
 21 common sense and logic?
 22 **A. Yes.**
 23 Q. Throughout your professional life
 24 when you have agreed to take on expert
 25 assignments is there any requirement that you

Page 200

1 Preston
 2 suspend common sense?
 3 **A. No.**
 4 Q. Would you please look at the first
 5 page of the proxy materials and let me direct
 6 your attention to the sentence which I will
 7 read into the record. "Your board of
 8 directors unanimously approved the acquisition
 9 and believes that it is in the best interest
 10 of OHSL stockholders."
 11 Do you see that?
 12 **A. I do.**
 13 Q. Did I read it correctly?
 14 **A. You did.**
 15 Q. Does that embrace two separate
 16 concepts?
 17 **A. Yes.**
 18 Q. The first concept is that the board
 19 of directors unanimously approved the
 20 acquisition, correct?
 21 **A. Correct.**
 22 Q. And based on the things you've
 23 testified to previously, we know that that's
 24 not true, correct?
 25 **A. It wasn't unanimous.**

Page 201

1 Preston
 2 MR. HILLER: Objection.
 3 Q. The second concept refers to the
 4 belief that the merger with Provident was in
 5 the best interest of OHSL shareholders,
 6 correct?
 7 **A. Correct.**
 8 Q. And we also know that that's not
 9 true, correct?
 10 **A. Correct.**
 11 MR. HILLER: Objection.
 12 Q. We know that Mr. Hanauer did not
 13 believe that the merger was in the best
 14 interest of shareholders simply based on his
 15 testimony, correct?
 16 **A. Correct.**
 17 MR. HILLER: Objection.
 18 Q. Additionally, we know that he did
 19 not believe that the merger was in the best
 20 interest of shareholders because Mr. Hanauer
 21 was the largest shareholder by far and he
 22 voted his personal shares and those he
 23 controlled against the merger, correct?
 24 MR. HILLER: Objection.
 25 **A. Correct.**

51 (Pages 198 to 201)

Page 202

1 **Preston**
 2 Q. We also know that Mr. Herron was not
 3 in favor of the merger and in fact resigned in
 4 part in protest, correct?
 5 **A. Correct.**
 6 Q. Mr. Burke asked you if you were an
 7 expert on the requirement of 8-Ks, correct?
 8 **A. Correct.**
 9 Q. Let me ask you this. Do you believe
 10 that it was obvious from the circumstances
 11 that Mr. Hanauer was against the merger?
 12 And when I say the circumstances,
 13 I'm specifically directing your attention to
 14 Mr. Herron's vote against continuing
 15 negotiations with Provident on July 22nd,
 16 1999.
 17 **A. You used Mr. Hanauer in the first**
 18 **part of that question and Mr. Herron in the**
 19 **second.**
 20 Q. I misspoke. Let me correct that by
 21 saying I meant to refer to Mr. Herron
 22 throughout.
 23 **A. OK. Yes, I believe it was obvious.**
 24 Q. Let me direct your attention to what
 25 has now been marked as Preston Exhibit 4. You

Page 204

1 **Preston**
 2 **A. I think it's an extraordinary act.**
 3 **I can't recall ever having seen somebody who**
 4 **felt that strongly.**
 5 Q. It's economically irrational,
 6 correct?
 7 **A. Yes.**
 8 Q. Can I direct your attention to
 9 paragraph 4. It has the specific dates of
 10 Mr. Herron's resignation, and its effective
 11 date.
 12 Can I at the same time direct your
 13 attention to page 63 of the proxy materials.
 14 There's a table of beneficial owners listed.
 15 **A. Yes.**
 16 Q. Would you look at the date on the
 17 top of that page.
 18 **A. Yes.**
 19 Q. And what date is selected?
 20 **A. July 31st, 1999.**
 21 Q. Is that one day after Mr. Herron's
 22 resignation became effective?
 23 **A. It is.**
 24 Q. Does that strike you as being a
 25 particularly unusual date to choose?

Page 203

1 **Preston**
 2 have had the opportunity to review that,
 3 correct?
 4 **A. Yes.**
 5 Q. Do you remember whether or not you
 6 have previously seen this?
 7 **A. I probably have. I certainly am --**
 8 **I was aware of it, the information. For**
 9 **example, I think I brought up earlier that**
 10 **Mr. Herron had said that he would not accept**
 11 **the -- he would not profit from this deal. He**
 12 **wouldn't exercise his options and profit.**
 13 **So I was aware of the information**
 14 **and I probably read it. I don't remember it**
 15 **specifically, but I probably have seen it.**
 16 Q. Part of your answer suggested that
 17 Mr. Herron left money on the table, correct?
 18 **A. Right.**
 19 Q. And he left money on the table by
 20 not exercising stock options to which he would
 21 have otherwise been entitled to, correct?
 22 **A. Correct.**
 23 Q. And do you read that just
 24 independently as an unusual act that suggested
 25 he was not in favor of the merger?

Page 205

1 **Preston**
 2 **A. It's uncanny coincidence.**
 3 Q. Ms. Preston, have you ever been
 4 involved in a merger transaction from any
 5 point of view, even litigation support, where
 6 a director resigned in part in protest so
 7 close in time to the final vote where his
 8 resignation and opposition was not disclosed?
 9 **A. Not that I recall.**
 10 Q. Let me direct your attention to
 11 paragraph 5 of the Herron affidavit. Do you
 12 see that?
 13 **A. Yes.**
 14 Q. Do you feel that Mr. Herron in
 15 calling each of his fellow directors
 16 sufficiently communicated his opposition to
 17 the merger to both the board and also to OHSL
 18 because Mr. Hanauer was one of the OHSL
 19 directors?
 20 **MR. HILLER: Objection.**
 21 **A. I can't imagine that anyone who**
 22 **received that call didn't understand that he**
 23 **was resigning in protest.**
 24 Q. You're familiar with the board vote
 25 on July 22nd, 1999, correct?

52 (Pages 202 to 205)

Page 206

1 Preston
 2 **A. I am.**
 3 Q. And you read those board minutes,
 4 correct?
 5 **A. Yes.**
 6 Q. And if memory serves, I believe that
 7 board meeting took place at the offices of
 8 Dinsmore & Shohl, Mr. Hiller's clients.
 9 Did you happen to remember that the
 10 board minutes indicated that Cliff Roe, one of
 11 the defendants in the case and the managing
 12 partner of Dinsmore, was actually in the room
 13 when Mr. Herron voted against the merger?
 14 MR. HILLER: Objection.
 15 **A. I didn't remember who was there. I**
 16 **think I testified earlier when Mr. Burke**
 17 **questioned me that there were lawyers present**
 18 **at the meeting.**
 19 Q. Do you believe that with Dinsmore
 20 lawyers being present at the meeting and
 21 actually seeing Mr. Herron voting against the
 22 merger, that they would have actual notice
 23 that Mr. Herron opposed the merger?
 24 MR. HILLER: Objection.
 25 **A. Yes.**

Page 207

1 **Preston**
 2 Q. That's the only inference that can
 3 be drawn, correct?
 4 MR. HILLER: Objection.
 5 **A. I can't think of another.**
 6 Q. May I direct your attention to
 7 paragraph 7, please.
 8 **A. Yes.**
 9 Q. The first sentence of paragraph 7 of
 10 the Herron affidavit reads as follows:
 11 "I believe that my opposition to the
 12 merger with PFGI was obvious to the OHSL
 13 defendants."
 14 Do you agree with that?
 15 **A. It was not only obvious, it was**
 16 **stated, so yes.**
 17 Q. Let me direct your attention to the
 18 first sentence of paragraph 8:
 19 "I ultimately resigned in part in
 20 protest because I did not want to be involved
 21 in, and responsible for, a transaction with
 22 which I deeply disagreed."
 23 Do you see that?
 24 **A. Yes.**
 25 Q. Is that consistent with the other

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1 Preston
 2 evidence that you've examined in the case with
 3 respect to Mr. Herron's views?
 4 **A. Yes.**
 5 Q. Do you give any particular
 6 significance to the disclosure or lack of
 7 disclosure of Mr. Herron's resignation and
 8 opposition given the history of family service
 9 to OHSL both before and after it became a
 10 public company?
 11 **A. Well, I think that we talked about**
 12 **earlier, I talked with Mr. Burke, about the**
 13 **fact that both Mr. Herron and Mr. Hanauer were**
 14 **obviously strongly associated with the**
 15 **company.**
 16 We talked about the fact that
 17 Mr. Hanauer testified that he had been told
 18 opposition to, um, any opposition to the deal
 19 would very likely cause, have great
 20 ramifications and scuttle the deal and that's
 21 certainly true of Mr. Herron as well.
 22 Q. Ms. Preston, let me direct your
 23 attention to the first sentence of paragraph
 24 9, which I will read into the record:
 25 "Although my resignation letter was

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1 Preston
 2 written in the spirit of diplomacy and did not
 3 specifically cite any disagreement with the
 4 company, there were reasons for expecting my
 5 resignation to be disclosed in the Proxy
 6 Materials, slash, Registration Statement, and
 7 I was very surprised when it was not."
 8 Do you agree that under these
 9 circumstances Mr. Herron's resignation should
 10 have been disclosed to the OHSL shareholders
 11 even though he specifically did not cite a
 12 disagreement with the company?
 13 MR. HILLER: Objection.
 14 **A. Well, I think Mr. Herron's**
 15 **resignation was a material piece of**
 16 **information for shareholders to be able to**
 17 **evaluate. So it should have been included.**
 18 Q. Mr. Herron talks about writing his
 19 letter in the spirit of diplomacy. Do you see
 20 that?
 21 **A. Yes.**
 22 Q. Do you fault Mr. Herron for the way
 23 he resigned?
 24 **A. I haven't thought about that. I**
 25 **mean, Mr. Herron, he clearly as he says wrote**

53 (Pages 206 to 209)

Page 210

1 **Preston**
 2 **his letter in the spirit of diplomacy, but he**
 3 **got on the telephone and he called every one**
 4 **of them and he didn't take the money that he**
 5 **could have made off of this deal.**

6 **I think it would be very hard for me**
 7 **to say that it was inappropriate.**

8 Q. I think Mr. Herron picks up on that
 9 theme in the second paragraph, excuse me, in
 10 the second sentence, paragraph 12, which
 11 begins on page 2 but goes over to page 3.

12 "I do not believe that there was any
 13 other way that the OHSL defendants could have
 14 interpreted it." Meaning he's talking about
 15 his resignation letter and the fact that he
 16 was resigning in part in protest of the
 17 OHSL/Provident merger.

18 Do you agree with that sentence?

19 **A. Yes, the fact that he was not --**
 20 **that he had called them all, that he didn't**
 21 **take the money he was entitled to from the**
 22 **options, I can't imagine any other way it**
 23 **could have been interpreted.**

24 Q. If you just flip to the first page
 25 for a moment, paragraph 2 talks about making

Page 212

1 **Preston**
 2 limitations in your answer. Let me read it
 3 anyway.

4 "Second, there is no dispute that
 5 Herron's departure from OHSL's Board was
 6 disclosed," with "emphasis in original."

7 Do you agree with that sentence?

8 MR. HILLER: Objection.

9 **A. I haven't seen anyplace where it was**
 10 **disclosed.**

11 Q. Ms. Preston, have you read the
 12 report submitted by Dr. William Lutz?

13 **A. Yes.**

14 Q. Is there anything that you disagree
 15 with in the report?

16 **A. No.**

17 Q. You generally agree with it,
 18 correct?

19 **A. Yes.**

20 Q. Let's put the affidavit aside for
 21 the moment and talk about the proxy materials
 22 in general.

23 What's the difference between proxy
 24 materials and annual report?

25 **A. An annual report is something that**

Page 211

1 **Preston**
 2 this affidavit "in further support of
 3 Plaintiffs' Motion for Summary Judgment on
 4 Unanimity Issues." Do you see that?

5 **A. Yes.**

6 Q. In paragraph 14 there's a quote that
 7 we've taken from the opposition to plaintiffs'
 8 motion for summary judgment of the OHSL and
 9 Provident defendants. And the quote reads as
 10 follows: "Herron admitted he never told his
 11 counsel of any objection to or protest of the
 12 merger, and never put it in the corporate
 13 minutes."

14 Based on what you've seen, read and
 15 understand in the case, do you agree with that
 16 statement that the OHSL and PFGI defendants
 17 put in a pleading?

18 MR. HILLER: Objection.

19 **A. I haven't read the whole pleading**
 20 **and I -- based on this, it seems like people**
 21 **were on notice. I would have to read the**
 22 **whole pleading to have a full opinion on that.**

23 Q. Let me direct your attention to
 24 paragraph 16. There's also a quote from the
 25 same brief, perhaps subject to the same

Page 213

1 **Preston**
 2 **the company does at the end of its fiscal year**
 3 **when it is required by the SEC to put out a**
 4 **report to its shareholders. It comes once a**
 5 **year and it is -- it's a disclosure of the**
 6 **past year's activities, including previous**
 7 **years' financial statements, a comparison of**
 8 **year-over-year status of the company.**

9 Proxy materials, and I guess it
 10 depends on whether you're talking about a
 11 special proxy such as this is or annually
 12 there's a proxy which is the company puts out
 13 to vote on its auditors, various issues like
 14 that, but this special proxy is information
 15 that is put out to elicit the vote of the
 16 shareholders on the sale of the company. It's
 17 an entirely different situation.

18 Q. Is it your understanding that this
 19 document is also a registration statement?

20 **A. Yes.**

21 Q. What is being registered?

22 **A. In this case what is being**
 23 **registered is the shares of Provident.**

24 Q. Newly issued Provident stock, right?

25 **A. Newly issued Provident stock.**

54 (Pages 210 to 213)

Page 214

1 **Preston**
2 Q. And that's because this transaction
3 was being paid for with Provident stock as the
4 currency, correct?
5 **A. Correct.**
6 Q. So in that sense, Provident's
7 business, its prospects, its future earnings,
8 were much more important than in a situation
9 where Provident would be buying OHSL with
10 cash, correct?
11 **A. OHSL would have no future interest**
12 **in Provident. So as long as they got the**
13 **cash, the deal was over for them.**
14 Q. Does Defendant's Exhibit 1 contain
15 financial information provided by Provident?
16 **A. Yes.**
17 Q. And that financial information,
18 which I believe you'll find on pages 6 and 7,
19 goes back to 1994, correct?
20 **A. Correct.**
21 Q. And without getting into technical
22 explanations about restatements and
23 materiality, is it fair to say that the
24 information contained in the proxy materials
25 from Provident is simply wrong?

Page 215

1 **Preston**
2 **MR. HILLER: Objection.**
3 **A. Yes.**
4 Q. Is it fair to say that this wrong
5 information was relied upon by McDonald quite
6 specifically in their fairness opinion?
7 **MR. HILLER: Objection.**
8 **A. Yes.**
9 Q. Is it also fair to say that the
10 expectation was that this would be sent to
11 OHSL's shareholders who would be able to rely
12 on the document in its entirety?
13 **MR. HILLER: Objection.**
14 **A. That's the whole purpose of the**
15 **document.**
16 Q. And we now know that their reliance
17 on the document was misplaced because at
18 minimum it contained false financial
19 information from Provident as well as material
20 misstatements, misrepresentation with respect
21 to unanimity and Herron's resignation among
22 other things, correct?
23 **MR. HILLER: Objection.**
24 **A. Yes.**
25 Q. Who does Defendant's Exhibit 1 come

Page 216

1 **Preston**
2 from?
3 **A. It comes from OHSL.**
4 Q. OHSL?
5 **A. Yes.**
6 Q. Does it also come from Provident in
7 some sense because it's a joint document?
8 **A. Oh, yes. Sure.**
9 Q. Would you expect the respective
10 boards of OHSL and Provident to have read the
11 document and have understood it at least in
12 broad strokes?
13 **A. It's been my experience that this is**
14 **a cooperative document that is generally put**
15 **together by the boards, by their lawyers with**
16 **the input from their investment bankers.**
17 **I personally have been involved in**
18 **making presentations to boards of directors**
19 **about the financial information that's**
20 **included in proxies. So I cannot imagine they**
21 **would not have been important.**
22 Q. Ms. Preston, have you opined in any
23 way or have you formed any conclusions with
24 respect to whether or not the OHSL board
25 fulfilled its fiduciary duties to the OHSL

Page 217

1 **Preston**
2 shareholders?
3 **A. I think your fiduciary duty is to**
4 **put out a reliable document, and I don't think**
5 **this is a reliable document. So they haven't**
6 **fulfilled it.**
7 **MR. HILLER: Objection.**
8 Q. Ms. Preston, in one of your
9 footnotes you mentioned something that you
10 were concerned that Mr. Zoellner did not seem
11 to know that the OHSL directors had any
12 responsibility for the document.
13 Why were you concerned about that?
14 **A. Well, it spoke to an incredible lack**
15 **of awareness of the responsibility of a**
16 **director or – it was either lack of awareness**
17 **or the intentional obliviousness. I don't**
18 **know. I don't know what.**
19 **But certainly, a director had – is**
20 **a fiduciary for his shareholders. It's hard**
21 **for me to understand how you could think you**
22 **didn't have responsibility for it.**
23 Q. Ms. Preston, let's talk about the
24 various hats that Mr. Hanauer wore.
25 The defendants have suggested that

55 (Pages 214 to 217)

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1 Preston
2 Mr. Hanauer may have believed that the merger
3 was not in the best interest of the
4 shareholders and therefore voted for it as a
5 director. But because there were no voting
6 agreements, he didn't believe it was in his
7 personal best interest and therefore he voted
8 his personal shares against it, which he was
9 free to do.

10 What would you say to that?

11 **A. I would say that's not what**
12 **Mr. Hanauer testified. Mr. Hanauer testified**
13 **that he didn't think it was in shareholders'**
14 **best interest. And that the fact -- and I**
15 **think the fact that he didn't think it was in**
16 **shareholders' best interest, it was incumbent**
17 **upon him to make that known to the**
18 **shareholders and incumbent on the company to**
19 **make it known.**

20 **In fact, I think the KMK lawyers**
21 **testified, several of the lawyers who worked**
22 **on the transaction, testified that it was**
23 **important that he make it known, and some of**
24 **the Provident directors testified it was**
25 **material that it be known.**

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1 Preston

2 **A. Yes.**

3 Q. And you know that both Keating,
4 Muething & Klekamp and Ernst & Young have been
5 dismissed based largely on statute of
6 limitations grounds.

7 **A. Yes, that's what you have**
8 **represented to me.**

9 Q. Have you ever been involved in a
10 case where the law firm that is defending the
11 majority of the defendants in the case was
12 responsible in part for a large percent of
13 work on the merger itself?

14 **A. Not to my knowledge.**

15 Q. Are you familiar with the phrase
16 "conflict of interest"?

17 **A. Yes.**

18 Q. Do you think that this situation
19 might be a conflict of interest or a potential
20 conflict of interest?

21 **A. In my experience it would be a**
22 **reason to recuse oneself.**

23 Q. Ms. Preston, you've reviewed
24 plaintiffs' consolidated amended complaint,
25 correct?

Page 219

1 Preston
2 **So he may have had different**
3 **opinions. It's hard though to understand how**
4 **one abrogates their fiduciary duty, but in any**
5 **case, at the very least he had to disclose**
6 **that.**

7 Q. Why do you believe that Mr. Hanauer
8 hadn't disclosed his opposition to the merger?
9 Why isn't he just like any other shareholder
10 who is free to vote however he feels like?

11 MR. HILLER: Objection.

12 **A. Well, Mr. Hanauer isn't any other**
13 **shareholder. Mr. Hanauer is the CEO of the**
14 **company. He's the biggest shareholder. And**
15 **by the way, the proxy materials say there was**
16 **unanimity on the board and there wasn't**
17 **unanimity.**

18 Q. Ms. Preston, you know that the law
19 firm of Keating, Muething & Klekamp was a
20 defendant in this case for a period of time,
21 correct?

22 **A. Yes.**

23 Q. You also known that the accounting
24 firm of Ernst & Young was a defendant in this
25 case for a period of time, correct?

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1 Preston

2 **A. I have.**

3 Q. And you specifically reviewed the
4 questions and answers that were asked of KMK
5 transactional attorneys that appear in
6 paragraph 30 of the consolidated amended
7 complaint, correct?

8 **A. I did.**

9 Q. Do you interpret that testimony of
10 Mr. Weiss and Mr. Matthews respectively as
11 being adverse or potentially adverse to
12 clients or a client, Mr. Hanauer, that KMK
13 currently represents?

14 **A. This really goes beyond the scope of**
15 **my testimony, and it's not something that I**
16 **really formed an opinion on.**

17 Q. But it is fair to say that you
18 generally agree with KMK transactional
19 attorneys that if Mr. Hanauer opposed the
20 merger, that he had a duty to disclose that,
21 correct?

22 **A. Yes.**

23 MR. HILLER: Objection.

24 MR. BRAUTIGAM: Thank you very much
25 for your time and I have no further

56 (Pages 218 to 221)

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1 questions.

2 MR. HILLER: I don't have any other
3 questions, thank you.
4 (Time noted: 2:40 p.m.)
5
6

7
8 CANDACE L. PRESTON
9

10 Subscribed and sworn to before me
11 this ____ day of _____, 2004.
12
13
14
15
16
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1 *** ERRATA SHEET ***

2 ESQUIRE DEPOSITION SERVICES
3 216 EAST 45TH STREET
4 NEW YORK, NEW YORK 10017
5 (212) 687-8010

6 NAME OF CASE: THIEMANN VS. OHSL FINANCIAL
7 DATE OF DEPOSITION: October 22, 2004

8 NAME OF WITNESS: CANDACE L. PRESTON
9 PAGE LINE FROM TO

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21 CANDACE L. PRESTON

22 Subscribed and sworn to before me
23 this ____ day of _____, 2004.
24

25 (Notary Public) My Commission Expires:

Page 223

1
2 **CERTIFICATE**
3 **STATE OF NEW YORK**)
4 : ss.
5 **COUNTY OF SUFFOLK**)

6
7 I, THOMAS R. NICHOLS, a Notary
8 Public within and for the State of New
9 York, do hereby certify:

10 That CANDACE L. PRESTON, the
11 witness whose deposition is hereinbefore
12 set forth, was duly sworn by me and that
13 such deposition is a true record of the
14 testimony given by the witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that I
18 am in no way interested in the outcome of
19 this matter.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 7th day of November,
22 2004.
23
24
25

THOMAS R. NICHOLS

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4 MR. HILLER 189
5 MR. BRAUTIGAM 191
6 *****

7 PRESTON EXHIBITS: FOR ID:

8 1, Notice 4
9 2, Preliminary Expert Report of Candace L. 7
10 Preston, CFA, dated May 1, 2002

11 3, Preliminary Expert Report of Candace L. 8
12 Preston, CFA, dated August 30, 2004

13 4, 4-paged document, Affidavit of Thomas M. 191
14 Herron
15
16
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